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3000 SUPPLEMENTAL SECURITY INCOME-RELATED COVERAGE

In general, the criteria in this section follows those used by the Social Security Administration when determining the eligibility for Supplemental Security Income (SSI) for individuals who are aged (at least 65), blind or disabled. Decisions made by the SSI Office may not be overturned by this agency. If new information is presented, or conditions change, an independent decision of the individual's or couple's eligibility for Medical Assistance may be made.

3010 SSI APPEALS OF DISABILITY DECISIONS

If the Department of Human Services has an open Medicaid case in any program category, except for temporary coverage, this coverage will continue until a decision is reached on an SSI appeal regarding disability or until other Medicaid eligibility criteria are not met. The appeal must be filed in a timely manner according to SSI rules.

3020 INDIVIDUALS AND COUPLES RECEIVING SSI

The Social Security Administration administers the SSI Program which was established to meet the needs of aged, blind or disabled individuals. The basic needs in the SSI Program are established for individuals and couples by the Federal Government. 1973 Public Law, Chapter 790, passed by the Maine Legislature, established the State Optional Supplement Program to increase the basic needs.

Individuals who receive SSI or State Supplement payments, or are eligible under Section 1619B of the Social Security Act, are automatically eligible for Medicaid unless they refuse to assign their rights to medical payments for medical care or are ineligible due to a Medicaid Qualifying Trust. (see Sections 1240 and 3330.23) of this policy manual. Section 1619B individuals are those who are considered disabled but their earned income disqualifies them for an SSI payment. However, due to the use of a higher income guideline, they continue to be Medicaid eligible as determined by the Social Security Administration.

3021 STATE PAYMENT OF MEDICARE PREMIUMS

The Department pays the premium for Medicare, Part B coverage for recipients of SSI and the State Supplement to SSI who are Medicare eligible. This payment is called a "buy-in".

There is usually a delay between the time an individual is eligible for the buy-in and the time the buy-in begins. During this time, the individual continues to have the Part B premium deducted from their Social Security benefits. See Appendix (3-1)

3022 RETROACTIVE MEDICAID BENEFITS FOR SSI RECIPIENTS

An individual who has been determined by the Disability Determination Unit (DDU) to meet the disability criteria for receipt of SSI also meets the disability criteria for SSI-related Medicaid benefits for the three months prior to application for SSI benefits. If there is an indication that the onset of the disability was between the first day of the third prior month and the application date eligibility begins with the first month of disability. Unless there is information to the contrary, the individual's statement of the onset may be accepted. If there is an indication that the individual was not disabled on the first day of the third month prior to the application for SSI, and if there is no information which would indicate the date of the onset of disability, then the procedures outlined in Section 3130 must be followed. In determining retroactive Medicaid eligibility for all SSI recipients (aged, blind or disabled) all eligibility factors must be met. The best information available regarding income and assets should be used.

3100 BASIC ELIGIBILITY REQUIREMENTS

Individuals who are aged, blind or disabled and are not receiving SSI or a State Supplement payment may be eligible for Medical Assistance as SSI-related if they meet the basic criteria of the SSI Program.

3110 AGED

The individual must be 65 years of age in or before the month in which eligibility begins.

3120 BLIND

The individual must have, in terms of ophthalmic measurement, central visual acuity of 20/200 (can see on the eye examination chart at 20 feet what a normal vision can see at 200 feet) or less in the better eye with best correcting glasses or must have a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends at an angular distance of no greater than 20 degrees or must have a visual field efficiency reduced to 20% or less; or if in the opinion of the consulting ophthalmologist the visual field limitation encroach on the central visual axis sufficient to interfere with useful vision. Such a person has what is known as economic blindness which prevents the performance of ordinary activities for which eyesight is essential. For determining the visual field efficiency, the amount of radial contraction in the eight principal meridians shall be determined, and the sum of these eight, divided by 420 (the sum the eight principal radii of the industrial visual field) multiplied by 100 will give the visual field efficiency of one eye in percentage.

3120 cont.

the industrial visual field) multiplied by 100 will give the visual field efficiency of one eye in percentage.

3130 DISABLED

Current eligibility for Social Security, Railroad Retirement, Medicare or SSI benefits based on disability or blindness is proof of disability.

For individuals whose SSI Benefits are terminated, for reasons other than disability, a contact to the local Social Security Office should be made to determine the next disability review date. For Medicaid purposes this review date will be adopted.

If the individual is not currently receiving benefits from one of the sources above, then an independent disability decision must be made. To determine if a person meets the definition of disability, a referral will be made to the Medical Review Team (MRT). This group consists of a physician and a caseworker who specialize in medical eligibility determinations. This group makes the decision as to whether or not the individual meets the definition of disability and establishes any additional reviews of medical disability.

This decision is based on a medical report which must include a substantive diagnosis based either on existing medical evidence or upon current medical examination. To end coverage based on disability, the Medical Review Team must determine that medical improvement as set forth in 20 CFR 416.994 has occurred in relation to the most recent decision that was favorable to the individual.

The medical evidence must be from an acceptable source. Acceptable sources are:

- I. licensed physicians;
- II. licensed osteopaths;
- III. licensed or certified psychologists;
- IV. licensed optometrists for the measurement of visual acuity and visual fields. (A report from a physician may be required to determine other aspects of eye diseases.)
- V. a hospital, clinic, sanitarium, medical institution or health care facility.
- VI. P.E.T. and other school medical records

Reports from chiropractors are not acceptable.

The social history must contain sufficient information to make it possible to relate the medical findings to the activities of substantial gainful employment and to determine if the individual is disabled.

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An impairment or combination of impairments is not severe if it does not significantly limit physical or mental ability to do basic work activities.

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include

- I. physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- II. capacities for seeing, hearing and speaking;
- III. understanding, carrying out, and remembering simple instruction;
- IV. use of judgment;
- V. responding appropriately to supervision, co-workers and usual work situations;
- VI. dealing with changes in a routine work setting.

The following are criteria which the MRT uses to determine if an individual meets the definition of initial disability and any additional reviews for SSI-related disability coverage:

- I. An individual is determined to be disabled only if the physical or mental impairments have lasted or can be expected to last for a continuous period of not less than 12 months, expected to end in death, or are so severe that the individual is not only unable to do previous work, but cannot (considering age, education and work experience) engage in any kind of Substantial Gainful Activity (SGA) (see Section 3131) which exists in the community regardless of:
 - A. whether a specific job vacancy exists or
 - B. whether the individual would be hired if application for work were made.

If the individual is not working, disability must be based on activities which still can be performed despite limitations (residual functional capacities). Activities, age, education and work experience will be used when the limitations would not permit the individual to return to prior work in order to determine if the individual can participate in any other type of work.

3130 cont.

- II. A child is considered disabled if there is any medically determinable physical or mental impairment of comparable severity.
- III. The physical or mental impairment must be one that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. The individual must follow any prescribed treatment plan.
- IV. Coverage may be granted or continued if the individual has good reason for not following a prescribed treatment plan. These reasons include:
 - A. The specific medical treatment is contrary to the established teaching and tenets of the individual's religion.
 - B. The prescribed treatment is cataract surgery for one eye but there is an impairment of the other eye resulting in a severe loss of vision which is not subject to improvement through treatment.
 - C. Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.
 - D. The treatment is very risky, unusual, or of a great magnitude such as open heart surgery or organ transplants.
 - E. The treatment involves amputation of an extremity or a major part of an extremity.
- V. A person who otherwise qualifies for medical benefits, by reason of disability, cannot be an eligible individual for any month if determined to be a drug addict or an alcoholic unless undergoing treatment that may be appropriate and available for that condition. If the individual is in an institution it must be approved for this purpose and treatment must be available.
- VI. An applicant may receive Medicaid coverage if the Medical Review Team (MRT) determines that s/he is presumptively disabled or blind and meets all other financial and non-financial requirements for Medicaid. A final determination must be made within six (6) months of the presumptive decision.
 - A. presumptive eligibility entitles the individual to full Medicaid benefits. If subsequently found not medically or otherwise eligible, adequate and timely notice must be given before coverage stops.
 - B. the start date for presumptive decisions is the first day of the month in which the decision is made. If the final decision is that the individual is not eligible, the closing will take place even if a Fair Hearing is requested. A reconsideration cannot be done.

3130 cont.

- C. if an individual's prior application has been denied base on medical factors, a presumptive decision can be made only when there is sufficient evidence of an worsening of his/her physical or mental condition (or the existance of a new impairment) which could demonstrate a strong likelihood that the subsequent presumptive decision should be allowed.
- D. a presumptive decision can be made when the alledged impairment falls within the following categories:
 - (1) amputation of 2 limbs or a leg at the hip,
 - (2) total deafness or blindness,
 - (3) a stroke more than 3 months ago with continued marked difficulty in walking or using a hand or arm,
 - (4) cerebral palsy, muscular distrophy or muscle atrophy,
 - (5) diabetes with amputation of a foot,
 - (6) Down Syndrome,
 - (7) mental retardation,
 - (8) HIV infection,
 - (9) a child age 6 months or younger showing low weight at gestational age (age at birth based on date of conception),
 - (10) a physician or knowledgeable source confirms an individual is receiving hospice services due to terminal cancer, or
 - (11) spinal cord injury producing the inability to ambulate without the use of a walker or bilateral hand-held assistive device.

3131 SUBSTANTIAL GAINFUL ACTIVITY (SGA)

This SGA test on income is used when determining eligibility for the State Supplement.

"Substantial Gainful Activity" (SGA) is full or part time work that involves physical or mental activities which are usually done for pay or profit, although there may not be a profit.

The following are examples of activities that would not be considered Substantial Gainful Activity:

- I. A job is made for an individual out of sympathy or compassion, or which can be performed only because others provide more assistance or supervision than would be characteristic of a bona fide employment situation or a market for the goods or services is created more out of sympathy than intrinsic value received.
- II. A job that is part of occupational therapy prescribed and supervised by a physician.
- III. An activity which is in the nature of a hobby and does not provide a bona fide job opportunity from the standpoint of genuine economic demand and remuneration.
- IV. Activity which is part of an active Vocational Rehabilitation program constituting training and supervised by a rehabilitation agency.

Applicants who have average monthly earnings of more than \$700 a month are considered to be engaging in SGA. (see Appendix 3-2 for calculation of this application pretest).

Applicants who have stopped work in the month of application do not have to meet the SGA test. Any income from the terminated employment is countable income.

Recipients who are working must continue to meet the definition of disability and the income limit of their eligibility group. (see Section 6000 to calculate Medically Needy deductible using Impairment-Related Work Expenses (IRWE)).

3140 REFERRAL TO VOCATIONAL REHABILITATION

Persons under age 65 who are blind or disabled, are to be referred to Vocational Rehabilitation for review of the individual's need to use their services.

3150 RECONSIDERATIONS (APPEALS)

An individual may request a reconsideration (appeal) within 30 days of notification of the disability decision. A reconsideration is done when additional information regarding the original impairment is available. If requested within 10 days of the denial notice, the original application date is used and temporary coverage may be granted on the 46th day.

For individuals being closed because it has been determined that they are no longer disabled, coverage will continue if a reconsideration is requested within 10 days of the closing notice.

Any request for reconsideration made more than 30 days from the notification of the disability decision requires a new application.

3160 DETERMINATION OF CONTINUED ELIGIBILITY WHEN THE DISABLED INDIVIDUAL BEGINS TO WORK

When earnings are reported the Medical Review Team (MRT) will be alerted when:

- I. a medical review has not been done nor has one been scheduled in the past or coming 6 months. These are usually situations of longer term disability such as asthma. The MRT will reschedule a review within the next 6 to 12 months. This gives the individual an opportunity to try the job, on an ongoing basis, to see if work is possible on this basis.
- II. the MRT has identified the situation as one in which recovery is expected even if a review has been done or is expected to be done in the past or coming 6 months. In this instance the MRT may do a complete review regardless of the scheduled review date and request current medical information if recovery is expected within 6 months. Usually these are situations with a short term disability such as recovery from an accident.

If the individual is not scheduled for further medical review, the MRT does not need to be alerted when earnings are reported, but any earnings must be budgeted. These are usually situations of terminal illness or severe disability with no chance of recovery.

3200 COVERED INDIVIDUALS

When determining SSI-related eligibility, individuals are considered either eligible individuals, ineligible spouses, eligible couples or an eligible child.

An "eligible individual" is the person who is applying for or receiving Medical Assistance.

An "ineligible spouse" is the person to whom the individual is married, who is living with the individual, and who is not applying for or receiving Medical Assistance. The spouse can choose to be an ineligible spouse.

An "eligible couple" are married individuals, living together, who both have made application for or are recipients of SSI, the State Supplement or SSI-related Medical Assistance. Both individuals must meet all eligibility criteria. It is not possible to treat each spouse as an eligible individual if they are living together. Each spouse is considered an eligible individual effective the month after they cease to live together. For married couples who are residing in the same nursing home room, or who are applying for waiver services in the community, special criteria may need to be considered. (see Sections 4110 and 5080).

3200 cont.

An "eligible child" is a blind or disabled individual who is neither married nor the head of a household (see Section 3510) and

- * under age 18; or
- * under age 22 (through age 21) and a student regularly attending school or college or training designed to prepare him/her for a paying job. The child/student can have the student earned income exclusion and an ineligible child allocation (Section 3540).

An individual whose marriage has been terminated through death, divorce or annulment is considered not married.

Child status ends effective with the month after the month of attainment of age 18 (age 22 if a student) or the month after the month s/he last meets the definition of a child.

All eligible individuals and couples must meet financial guidelines and be a member of one of the following groups:

3200.01 INDIVIDUALS OR COUPLES MEETING SSI/STATE SUPPLEMENT CRITERIA

Individuals or couples who meet the criteria for SSI or the State Supplement and who have not applied or who do not want to apply for both cash payments.

3200.02 INDIVIDUALS OR COUPLES ELIGIBLE UNDER THE PICKLE AMENDMENT OR LYNCH VS: RANK

Commencing April 1, 1977, those individuals or couples formerly entitled to concurrent benefits from SSI and Social Security who would be eligible for SSI if annual cost of living adjustments are not counted. See Appendix (3-3) for specifics.

3200.03 INDIVIDUALS OR COUPLES RESIDING IN ADULT FOSTER HOMES (PRIVATE OR STATE ASSISTED) OR FLAT RATE BOARDING HOMES

Individuals or couples who are residing in these homes have special income guidelines for State Supplement eligibility. If income exceeds these special guidelines the individual or couple may still be eligible for Medicaid. See Section 3600.

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3200.04 INDIVIDUALS OR COUPLES RESIDING IN COST REIMBURSEMENT
BOARDING HOMES

Individuals or couples who are residing in these homes have special income limits for State Supplement eligibility. If income exceeds these guidelines the individual or couple may still be eligible for Medical coverage and for help with the cost of room and board. See Section 3600 and 3610.

3200.05 INDIVIDUALS IN NURSING CARE FACILITIES

Individuals must be in a facility licensed by the Department of Human Services to provide nursing care services. There are four types of facilities:

- I. General Hospitals (Awaiting Placement)
- II. Skilled Nursing Care Facilities (SNF)

- III. Intermediate Nursing Care Facilities (ICF)
- IV. Nursing care sections of the following institutions for the care of the mentally disabled:
 - A. Augusta Mental Health Institute (AMHI)
 - B. Bangor Mental Health Institute (BMHI)
 - C. Pineland Hospital and Training Center

Special eligibility criteria must be met by individuals in these types of facilities. (See Section 4000.)

3200.06 INDIVIDUALS RECEIVING NURSING CARE IN COMMUNITY SETTINGS

There are several programs available for individuals who require nursing home care and are living in the community. These programs are called "Home and Community Based Waiver Programs" because they provide special services and follow special eligibility criteria. (See Section 5000.)

The waiver programs are:

- I. The Bureau of Maine's Elderly Waiver (BME)
- II. Alternative Living for Physically Handicapped Adult's Waiver (ALPHA)
- III. The Waiver for Individuals with Mental Retardation (BMR)
- IV. The Waiver for Adults with Disabilities (through Crotched Mountain).

3200.07 CHILDREN ELIGIBLE UNDER "KATIE BECKETT" WAIVER

Disabled children, age 18 and younger, who are living in the community and would be eligible for Medicaid if in a nursing care facility. There are no special services provided to this group. The waiver pertains to income and assets only. (See Section 5000.)

3200.08 CERTAIN INDIVIDUALS RECEIVING SOCIAL SECURITY DISABLED WIDOW(ER)'S BENEFITS WHO ARE NOT RECEIVING MEDICARE

Individuals, who are not eligible for Medicare and who lost their SSI or State Supplement benefits due to receipt of disabled widow(er)'s benefits from Social Security. If the individual meets all other SSI criteria and would be eligible for SSI or State Supplement benefits if the amount of Social Security benefits received as a disabled widow(er) were excluded income, the individual is eligible for categorically needy, SSI-related Medicaid coverage. The exclusion of income from the Social Security disabled widow(er) continues until the individual is eligible for Medicare or would be ineligible for SSI or State Supplement benefits for a reason other than the income from Social Security disabled widow(er)'s benefits.

3200.09 QUALIFIED DISABLED AND WORKING INDIVIDUALS (QDWI)

A Qualified Disabled and Working Individual is one who is not eligible for any other Medicaid program and who has lost entitlement to Social Security disability benefits due to excess income from wages. The individual must also be entitled to hospital insurance under Medicare Part A.

The only benefit that an eligible QDWI individual receives is the payment of the Medicare Part A premiums. (See Appendix 3-1.) No Medicaid cards are issued.

3200.10 QUALIFIED MEDICARE BENEFICIARY (QMB)

A Qualified Medicare Beneficiary is an individual who:

- I. is entitled to Medicare Part A or voluntarily enrolled in Medicare Part A, and
- II. has income equal to or less than 100% of FPL, and
- III. has assets of less than \$4,000 for an individual. For a couple, assets are less than \$6,000.

Under this group:

- A. Medicaid pays the cost of Medicare premiums, deductibles and coinsurances. (See Appendix 3-1.)
- B. an individual may be eligible for QMB and Medicaid at the same time.
- C. coverage begins the month after an eligibility decision is made. There is no 3 month retroactive period.

3200.11 DISABLED ADULT CHILDREN (DAC)

A Disabled Adult Child(ren) is an individual who lost his/her eligibility for SSI or State Supplement on or after July 1, 1987 due to an increase in or initial receipt of Social Security Benefits based on their DAC status. These individuals who maintain their DAC status with Social Security may continue to receive Medicaid coverage. In determining eligibility for Medicaid, the increase in Social Security Benefits that resulted in SSI ineligibility will be disregarded. Other changes in income will be taken into account and will affect eligibility.

A person receives Social Security Benefits under DAC status if the following conditions are met:

- I. He/she is the child (or eligible grandchild) of a retired, deceased or disabled worker.

- II. the individual must be at least 18 years of age;
- III. disability (including blindness) began before age 22.

Individuals may lose coverage under this group and later regain it. Continued eligibility is not necessary.

3200.12 SPECIFIED LOW INCOME MEDICARE BENEFICIARIES (SLMB)

A Specified Low Income Medicare Beneficiary is an individual who:

- I. is entitled to Medicare Part A or is voluntarily enrolled in Medicare Part A, and,
- II. has income over 100% of the Federal Poverty Level (FPL) and equal to or less than 120% of FPL, and
- III. has assets of less than \$4,000 for an individual. For a couple, assets are less than \$6,000.

Under this group:

- A. Medicaid pays the cost of Medicare Part B premium (see Appendix 3-1);
- B. an individual may be eligible for SLMB and Medicaid at the same time; and
- C. coverage begins the month of application, retroactive to 3 months (but not prior to January 1, 1993).

3200.13 QUALIFYING INDIVIDUALS

There are 2 groups of Qualifying Individuals:

- I. Qualifying Individual, Part 1, is one who:
 - A. is entitled to Medicare Part A or is voluntarily enrolled in Medicare Part A, and,
 - B. has income more than 120% of the Federal Poverty Level (FPL) but less than 135% FPL, and,
 - C. has assets less than \$4,000 for an individual. For a couple, assets are less than \$6,000.

Under this group:

- D. Medicaid pays the cost of the Medicare Part B premium.
- E. The individual cannot receive Medicaid coverage and this benefit at the same time.
- F. Coverage begins the month of application up to three months retroactive but no earlier than January, 1998.

II. Qualifying Individual, Part 2, is one who:

- A. is entitled to Medicare Part A or is voluntarily enrolled in Medicare Part A, and
- B. has income equal to or more than 135% of the Federal Poverty Level (FPL) and less than 175% FPL, and,
- C. has assets less than \$4,000 for an individual. For a couple, assets are less than \$6,000.

Under this group:

- D. the individual is eligible for help in paying for their Medicare Part B premium in the amount of \$1.07 per month for the calendar year 1998. For calendar year 1999 the amount is \$2.23.

This benefit is authorized once a year as an annual payment of \$12.84 for 1998, \$26.76 for 1999.

If a couple is eligible, one check will be authorized for the couple in the amount of \$25.68 for 1998, \$53.52 for 1999.

This benefit is issued if the individual is eligible in the month they apply or the following month.

- E. This benefit cannot be authorized in the same month in which the individual is receiving Medicaid coverage.
- F. The individual must apply each year for which they are requesting this benefit except that for applications received in December, the benefit for that year and the next year are authorized. For example, for an application received in 12/98, benefits are authorized for 1998 and 1999.

3200.14 OTHER COVERED GROUPS

Within this section there are other groups which are included in Federal Law. These are listed in Appendix (3-4) for informational purposes.

3200.15 INDIVIDUALS UNDER AGE 18 WHO ARE CLOSED FROM SSI DUE TO AUGUST, 1996 CHANGE IN DISABILITY CRITERIA

Individuals under age 18 are Medicaid eligible if the individual:

- I. was in current pay status with SSI in August, 1996; and
- II. is closed due to not meeting the child disability standards that became effective on August 23, 1996, and
- III. continues to meet the SSI child disability criteria in effect prior to August 23, 1996; and,
- IV. continues to meet federal SSI income and resource standards.

If the individual is closed from SSI for a reason other than not meeting the changed disability criteria, such as being over income or assets, or failing to cooperate in establishing eligibility, this protected status does not apply and the individual must then meet current Medicaid eligibility criteria.

Once an individual has been receiving Medicaid under this protected status and they fail to meet any of the criteria in I – IV above, the protected status is lost and eligibility is determined using the current Medicaid criteria.

3200.16 WORKING DISABLED

This coverage group includes individuals who meet the SSI standard for disability and who have earnings subject to federal tax withholding but are not eligible for Medicaid under any other coverage group. These individuals may buy into Medicaid by paying a monthly premium if the specific requirements of this coverage group are met. This is an SSI related coverage group using SSI related rules for treatment of income and assets, however, there are income and asset limits specific to this coverage group.

3300 ASSETS

3310 DEFINITIONS

- I. "Assets": Cash or other liquid assets or real or personal property, owned in full or part by an individual or couple. See Section 4120 for the definition of assets relating to transfers.
- II. "Liquid assets": Cash or other assets that can be converted into cash on demand.
- III. "Non-liquid assets": Real or personal property that cannot be converted into cash on demand.

- IV. "Equity Value": The fair market value of real or personal property minus any encumbrances. Examples of encumbrances are: mortgages, liens, and other debts on or attached to the property.
- V. "Fair market value": Amount that can be expected to be received for selling a similar article on the open market in the geographic area involved.
- VI. "Ownership": Power, authority or title to sell, exchange, convert or redeem any property. Property in the name of a child is available to both child and parent, as the parent can make it available.
- VII. "Available asset": An asset that has a value, which is legally obtainable by the individual or couple. If there is a penalty on early or late withdrawal to get the asset, the available asset is the amount after the penalty is taken.
- VIII. "Unavailable asset": An asset that has a value which is legally unobtainable to the individual or couple.

3320 USE OF ASSETS

Individuals must use their assets to meet their needs. Specific types and amounts may be retained to meet current and future needs. (see Section 3330).

If assets are potentially available applicants, recipients or others acting on their behalf must take action to make them available.

All available assets are to be used in determining eligibility. Special treatment for couples when one is applying for nursing care assistance is covered in Section 4130.

3330 EXCLUSIONS - GENERAL

Up to \$8,000 of savings for an individual, \$12,000 for an assistance unit of 2 or more. Any amount over the excluded amount is counted toward the asset limit. Savings is defined as an account which earns interest or dividends and includes:

- * savings or checking account including those in a credit union,
- * IRA,
- * Keough,
- * available cash value of an annuity,
- * stocks,
- * bonds,
- * mutual funds,
- * cash surrender value of life insurance.

The \$8,000/\$12,000 exclusion applies to all accounts subject to the exclusion. The exclusion is not applied to each account.

3330 cont.

Following is a list of assets that include the most common types. Unless specifically indicated as excluded or unavailable, all assets are counted toward the appropriate limit (see Section 3370) whether listed here or not.

3330.01 ANNUITIES

An annuity is an investment on which an individual receives fixed payments for a lifetime or a specified number of years. The annuity may be purchased by the individual or a third party.

An annuity that is purchased by the individual is treated as follows:

- I. Deferred annuity - this is an annuity under which the benefit payment will begin at some future date. The individual has not yet selected a payment option (life only, 10 year period certain, etc.).

The current value of the annuity, including the principal and interest earned on the principal, is a countable resource.

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No consideration is given to any penalty fees that may be associated with withdrawal of the funds.

- II. Annuitized - this is an annuity under which the individual is receiving a benefit payment under a payment option (life only, 10 year certain, etc.) which they have selected.

Once annuitized, the annuity is not an available resource.

If the individual has purchased other than a straight life annuity, a transfer of assets has occurred. This is because the individual has purchased not only a benefit for him/herself but also payments to a beneficiary.

The value of the transfer is equal to the difference between (a) the cost of the annuity purchased and (b) the cost of a straight life annuity providing the same monthly benefit. The date of the transfer is the date the payment option is selected and the funds cannot be returned to the individual.

EXAMPLE:

In June 1994, at age 67, Dick Deal purchased a life income with period certain annuity for himself. Monthly benefits are \$1000 and are to begin the following month. This was purchased for \$120,000. In order to determine the amount of the transfer, Mr. Deal must obtain a statement from the insurance company as to how much it would have cost him to have purchased an individual straight life annuity with monthly benefits of \$1000. In this case an individual straight life annuity with monthly benefits of \$1000 would have cost Mr. Deal \$90,000.

The amount of the transfer is \$30,000 (\$120,000 - \$90,000). The penalty is for 8 months beginning in June, 1994.

Payments from annuities are considered income to the individual for whom the payments are designated.

If the annuity is purchased by other than the individual, the payments are counted as income. There is no countable resource nor is there a transfer of assets.

3330.02 ASSETS BEING CONVERTED

Items which are in the process of being converted are exempt. Examples are insurance policies which have been sent to the insurance company, property which is being probated and stocks which have been submitted for redemption.

3330.03 ASSETS WITH NO SALABLE VALUE

Any asset which has no salable value will not be used in determining eligibility because it has no equity value. The individual must provide verification from two reliable sources that the asset has no salable value.

EXAMPLES:

- I. Homes that, due to structural damage, and their location on leased property, have no resale value.
- II. Property not large enough to be sold due to changes in zoning laws.
- III. Vehicles which cannot be sold due to mechanical or other problems.

3330.04 BURIAL CONTRACTS/SPACES/FUNDS

Prepaid burial contracts (mortuary trusts) are an excluded asset.

Burial spaces which are intended for the use of the individual, spouse or other member of the immediate family are an excluded asset.

Each individual may have up to \$1500 set aside in a separate identifiable account for their burial expenses. For each spouse deduct the amount of any prepaid burial contracts from the \$1500 limit. Term insurance is excluded as an asset and does not work against the life insurance threshold. Then deduct any excluded face value of whole life insurance (see Section 3330.10). If these amounts total less than \$1500 when combined, then any remainder can come from funds held in bank accounts. Once this money is considered a designated burial fund, there must be documentation in the case to show that no transactions are made to the asset except for the posting of interest and the addition of funds.

Once funds have been designated for burial, any interest accrued is excluded as income or asset as long as the individual remains continuously eligible for Medicaid and no withdrawals are made from the fund. Interest on these funds is excluded even if the total amount of the original designated funds plus the accumulated interest exceed the \$1500 limit.

EXAMPLE:

The individual indicates that a savings account of \$1450 has been set aside for burial. At the time of the next review, the savings account has increased due to accumulated interest to \$1563. The entire savings account continues to be an excluded asset and the interest is not considered income.

Several months later, the individual becomes ineligible for Medicaid. If the individual reapplies, only \$1500 of the designated burial funds can be excluded. If continuous coverage cannot be redetermined, any interest earned only on the \$1500 would be excluded income and assets. The interest earned on the amount over \$1500 would have to be counted as income.

If an individual's whole life policies are not excluded because the face values, when combined, exceed \$1500 (see Section 3330.10), then part or all of the cash values may be excluded as a designated burial fund.

Deduct the amount of any prepaid burial contracts from the \$1500 limit. Any remainder can be deducted from the cash value of the life insurance, to reduce the amount of the countable asset. In this case there must be documentation in the case record of the amount being designated for this purpose and verification that no loans are transacted on the policies.

EXAMPLES:

- I. The individual has one insurance policy with a face value of \$1600 and a cash value of \$1300. There are no prepaid burials. The policy can be considered a \$1300 designated burial fund provided no loans are transacted.
- II. The individual has one insurance policy with a face value of \$1600 and a cash value of \$1800. There are no prepaid burials. The policy can be considered a \$1500 designated burial fund provided no loans are transacted. The remaining \$300 cash value is added to the other countable assets.
- III. The individual has one insurance policy with a face value of \$1600 and a cash value of \$1700. There is a prepaid burial plan for \$500 as well. Only \$1000 of the cash value can be considered a designated burial fund as the allowable limit of \$1500 is offset by the \$500 prepaid burial. The remaining cash value of \$700 is added to other countable assets.

In order to be excluded as "funds designated for burial", funds held as cash, (i.e., bank accounts or certificates of deposit), must be separately identifiable as different accounts and cannot be commingled with non-burial related funds.

The funds are excluded as burial funds effective the month in which they are separated.

At time of review, if burial funds have been co-mingled with non-burial related funds, the individual must be given an opportunity to separate the funds before they are counted as a resource. The funds must be separated by the end of the month that is 2 months after the month of review in which the individual is advised of the need to separate the funds.

EXAMPLE:

If the review is due 9/92 the individual should be advised that funds must be separated by 11/31/92. If they are not, the exclusion does not apply unless the reason for non-separation is beyond the control of the individual.

3330.05 CERTIFICATES OF DEPOSIT

The amount of the countable asset is the proceeds available to the individual or couple if they were to cash in the certificate now, minus penalties for early withdrawal.

3330.06 HOUSEHOLD GOODS

All household goods owned by the individual or their spouse are exempt.

3330.07 INDIVIDUAL AND EMPLOYEE PENSION PLANS

Earnings can be set aside in individual or employee pension plans, such as Simplified Employee Pension Plan (SEP), Individual Retirement Account (IRA), Keogh Plan or Deferred Compensation Plan. Each particular plan sets forth regulations governing accumulation and availability of funds. Often monies can be obtained upon demand although penalties for early withdrawal may decrease the asset value. Withdrawals may be taken as a lump sum, annuity or periodic income, or as with Deferred Compensation Plans the funds cannot be obtained until retirement or termination of employment. There is often a waiting period after retirement or termination during which funds are not available.

Funds are a countable asset at the point they are made available.

3330.08 INSURANCE SETTLEMENTS

Portions of insurance settlements earmarked and used, or intended to be used for specific purposes, are exempt for 6 months from date of receipt. Examples are back medical bills and attorney and legal fees associated with the settlement.

Verification of use, or intent to use, may be shown through verbal or written statements from those providers to whom the individual owes money associated with the settlement. For example, unpaid medical bills or attorney fees.

Portions of insurance settlements not specifically earmarked and used or intended to be used for specific purposes are income in the month received and any remaining portion is an asset in the following month.

For specific information regarding accident and injury settlements when the individual was on Medicaid see Section 1240.

For settlements associated with the replacement of an excluded asset, see Section 3330.18.

3330.09 LIFE ESTATES

A "life estate" is ownership of real property. Ownership is limited to term of life, usually that of the owner of the life estate, and may have other conditions attached such as occupancy.

Life estates are usually acquired by inheritance or when property is sold. In this situation, the individual sells the right to ownership after death and retains the right to ownership during their lifetime.

When real property is transferred with a life estate interest retained there may be a transfer of property penalty. To establish the value of the property rights transferred refer to Appendix (3-5)

- I. Determine individuals age at time of transfer.
- II. The amount in the first column, "Life Estate", is multiplied by the value of the property.
- III. The result is the presumed value of the life estate retained. The individual may present evidence under Section 3330.03 that the life estate has no salable

value. The value of the "Life Estate" retained is a countable asset but can be exempted with "an intent to return home statement".

- IV. The amount in the second column, "Remainder", is multiplied by the value of the property.
- V. The result is the value of the transfer.

EXAMPLE:

Mrs. Rioux, age 75, transferred property valued at \$70,000 and retained a life estate.

Value of life estate:

$$.52149 \times \$70,000 = \$36,505$$

Value of transfer:

$$.47851 \times \$70,000 = \$33,496$$

Occasionally a life estate may be transferred, sold, etc. To establish the value of the life estate, follow steps 1 thru 3 above:

EXAMPLE:

Mrs. Lee owns a life estate in property valued at \$50,000. At age 67, the property and life estate is transferred. The value of the life estate transferred is \$32,549 ($.65098 \times \$50,000$).

3330.10 LIFE INSURANCE

Life insurance is excluded as long as the combined face value of all whole life policies owned by the individual does not exceed \$1500. If the total face value of all whole life policies owned by the individual exceeds \$1500 then the cash values, minus any outstanding loans, is counted against the asset limit. A portion of the cash value may be excluded for burial purposes. (see Section 3330.04)

EXAMPLES:

- I. An individual has a face value life insurance policy of \$1000 and one for \$500. Even if the cash value exceeds \$1500, these are excluded.
- II. An individual has a \$2000 face value whole life policy. The cash value is \$1790. This results in assets of up to \$1790 counted against the asset level. Also see

3330.10 cont.

Section 3330.04 for potential exclusions for burial purposes.

- III. An individual has a \$2000 face value whole life policy. The cash value is \$1790 but there is a \$500 outstanding loan against the policy. This could result in an asset of up to \$1290 (\$1790 minus the \$500 loan) counted against the asset limit. (See Section 3330.04 regarding exclusions for burial purposes.)

Term life insurance is an excluded asset since it has no cash value.

3330.11 LIFE LEASE (TENANCY)

This is a contract arrangement to live in a certain place, usually for term of life. It is not ownership and therefore is not a countable asset.

3330.12 LUMP SUM PAYMENTS

Income that has accumulated and is received in one payment by the individual is considered a lump sum. This includes Workers' Compensation, Retroactive Social Security payments, Unemployment Benefits received retroactively due to the result of a hearing, and Veteran's Benefits. Gifts, inheritances, lottery winnings and insurance settlements are also considered to be a lump sum payment. SSI is excluded income.

Lump sum payments are counted as income in the month received, and any remaining the next month are counted as an asset, except for SSI or Social Security retroactive payments which are excluded as an asset for 6 months. After that, any portion remaining becomes a countable asset.

3330.13 LOANS

Money borrowed by an individual is not counted as either an asset or income for the month received. Any remainder is considered an asset in the following month.

Written statements from both the individual or couple and the party lending the money must be obtained indicating that the funds are a loan, the amount and the plan for repayment. Without verification of the loan the funds will be considered a gift and treated as a lump sum. (See Section 3330.12.)

3330.14 MORTGAGES AND PROMISSORY NOTES

A mortgage is a pledge of property to a creditor as security for the obligation or repaying a debt (note).

A note is a written promise to pay or repay a specific amount of money at a stated time. The note specifies conditions such as the amount to be paid, frequency of payments and interest rate.

The note, to be enforceable, and therefore to be of any value, needs to be signed by the debtor and needs to identify, in a complete and precise manner, the obligations to repay.

The presumed value of the note is the principal to be repaid minus any repayments on principal that have been made.

The presumed value can be refuted by obtaining a statement from two sources in the business of buying notes, such as a mortgage company. The statement should identify the amount the source would presently pay for the note and describe the basis for that amount.

The current value of the note then becomes the current sale value. If different sale values are obtained, the higher amount will be used.

A transfer of assets occurs when the current sale value of the note is established at less than the presumed value. The amount of the transfer is the amount by which the presumed value exceeds the current sale value. The date of the transfer is the date the note was signed by the debtor. See Section 4120 for treatment of asset transfers.

EXAMPLE:

Mr. Kolvin sells his home to his son in March, 1994. The home is valued at \$80,000. Mr. Kolvin holds a promissory note for \$80,000 and the note is secured by a mortgage. The presumed value of this note is \$80,000 since Mr. Kolvin has not yet received a return on the principal.

Sometime after March, 1994, Mr. Kolvin gets verification that the note is presently salable for \$50,000. \$50,000 becomes the current value of the note which is a countable resource. A transfer of \$30,000 took place as of March, 1994.

3330.15 PRIMARY RESIDENCES

The home which the individual or couple consider their primary residence and the land and all buildings on that land are exempt. This exemption also applies to any adjoining land as long as it is not separated by real property owned by others. Presence of any easement, road, waterway or other natural boundary does not change the exemption.

The home is also exempt

- I. if owned jointly with others who refuse to sell the property. A statement from the co-owner(s) is required or documented evidence that such a statement was asked for but not provided. See the policy on transfers for a possible transfer penalty when the individual has established joint ownership.
- II. if offered for sale at fair market value. This must be done through a real estate agent or actively advertised, in the media, by the owner in the area in which the property is located.
- III. if occupied by the spouse or dependent of the individual. A dependent is someone who is financially or medically dependent on the individual. This person is or could be claimed as a dependent for IRS purposes.

3330.15 cont.

- IV. during periods of temporary absences of the individual, spouse or dependent as long as they indicate their intent to return. (i.e., nursing home care, boarding home, hospitalization, visiting, etc.) Except for visiting, a written statement of intent to return must be submitted. If the client is unable to make this statement, someone acting on the individual's behalf, such as the individual's guardian, conservator or holder of Power of Attorney may do so.

Once a declaration of intent is made, it is valid until an intent not to return home is declared. At that time the home would become a countable asset on the first day of the month after the month in which the declaration is made. See Section 3330.17 in regards to real property other than the primary residence.

When processing a review, the worker should verify that the home has not been sold or transferred.

NOTE: Except for migrant workers (Section 1220), when a primary residence is located out of state, it cannot be exempted as a countable asset on the basis of an intent to return home. This intent to return to an out of state residence is inconsistent with the residence requirement which is that the individual be living in Maine and intend to remain here.

3330.16 PROPERTY AND EQUIPMENT USED FOR HOME CONSUMPTION OR TO PRODUCE INCOME

All property and equipment which is used to produce income is exempt. Also, any property used to produce goods or services for home consumption is exempt. This includes garden plots, wood lots and rental property that are income producing. This exclusion does not apply to liquid assets unless used as part of a business or trade.

This property/equipment will continue to be excluded when it is precluded from use because of a temporary disability or any other reason beyond the control of the individual as long as resumption of income production is likely.

3330.17 REAL PROPERTY OTHER THAN THE PRIMARY RESIDENCE

Real property may be excluded if

- I. it is up for sale at fair market value with a Realtor or actively being advertised by the owner in the geographic area of the property. If reasonable offers are turned down, no exclusion will be given.
- II. two different knowledgeable sources in the geographic area agree that the property cannot be sold due to a specific condition.

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- III. it is owned jointly with others who refuse to sell the property. A statement from the co-owner(s) is required or documented evidence that such a statement was asked for but not provided.

The equity value of all other property is counted.

For countable jointly owned property the asset limit is based on the proportion of ownership interest.

EXAMPLE:

A piece of land is left to an individual and his two sisters. Although there are three owners, the will indicated that one half of the property is owned by the individual. Therefore, one half of the equity becomes a countable asset unless otherwise excluded.

3330.18REPLACEMENT OF AN EXCLUDED ASSET

Cash received or in-kind replacement received to replace or repair an excluded asset that is lost, stolen or damaged is excluded for a period of 9 months. An additional 9 months can be given when circumstances beyond the individual's control prevented the replacement or repair of the asset..

EXAMPLE:

Individual has a motor vehicle that was excluded as his primary vehicle under Section 3330.24. The vehicle was involved in an accident. The insurance company gives the individual a check to replace the vehicle. The individual has 9 months in which to purchase another vehicle or repair the damaged one. If at the end of the 9 month period the individual still has the money, it will be counted against the asset limit.

3330.19REVERSE MORTGAGE

Proceeds from a reverse mortgage are treated as proceeds of a loan and are not income. Any proceeds available in the month following the month of receipt are a countable resource. This arrangement allows the homeowner to borrow, via a mortgage contract, a percentage of the appraised value of his/her home equity.

The homeowner receives a periodic payment (or a line of credit) which does not have to be repaid as long as the borrower lives in the home. In most reverse mortgages the original loan does not have to be repaid until the homeowner dies, sells the home, or moves.

3330.20SAVINGS BONDS

These are countable to the extent of their current cash value. (New bonds have no cash value for six months from the date of issue.)

If they are jointly owned, the amount to be counted is based on the proportion of ownership interest. If the joint owners (indicated by "and" on the bonds) refuse to sell, then the bonds are unavailable as an asset to the assistance unit.

3330.21 SAVINGS AND CHECKING ACCOUNTS

Accounts owned solely by the individual or couple and/or those owned jointly with others are considered to be totally available to the individual or couple unless the conditions in section 3340 are met. Any income deposited in these accounts is not an asset in the month it is received. If it remains in the account in the following month it is counted with all other assets.

3330.22 SELF-SUPPORT PLANS FOR BLIND OR DISABLED INDIVIDUALS

Any asset necessary to carry out an approved plan for achieving self-support for a blind or disabled individual is excluded. The plan must be approved by the Bureau of Vocational Rehabilitation or the Social Security Administration.

3330.23 STOCKS, BONDS AND MUTUAL FUND SHARES

The value of these assets is determined by multiplying the number of shares by the current value per share. Since the amount indicated on the certificates may be less than actually owned (due to stock splits and reinvestment of dividends) it is important to establish, with the company or broker, the actual number of shares.

If the shares are owned jointly with others (other than the spouse) then the amount of the countable asset is based on the proportion of ownership interest the individual or couple has.

If signatures are required by the other joint owners, in order for the shares to be sold and the joint owners refuse to sell, then the value of these shares is unavailable as an asset to the assistance unit.

If a decision is made to sell the shares, the value is excluded from the time a formal request is made until the proceeds of the sale are dispersed to the individual or couple by the company or broker.

3330.24 TRUSTS

A "trust" includes any legal instrument or device that is similar to a trust

TRUSTS ESTABLISHED BY THE INDIVIDUAL

- I. The following rules are effective for trusts established on or after 8/11/93 for medical assistance provided on or after 1/1/94. See Appendix 4-4 for rules for treatment of trusts established prior to 8/11/93. Special rules apply to the treatment of trusts established by the individual. These rules apply without regard to:
 - A. the purposes for which the trust is established,
 - B. whether the trustees have or exercise any discretion under the trust,
 - C. any restriction on when or whether distributions may be made from the trust, or,
 - D. any restrictions on the use of distributions from the trust.

- II. A trust is considered to be established by an individual if the assets of the individual were used to form all or part of the corpus of the trust and if any of the following entities and or individuals established the trust other than by will:

- A. the individual
- B. the individual's spouse
- C. a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse or with legal authority to act in place of or on behalf of the individual or the individual's spouse.

When a trust corpus includes assets of someone other than the individual, these rules apply only to the individual's portion of the trust assets. The individual's countable income and resources must be prorated based on the proportion of the individual's assets in the trust to those other persons.

- III. Revocable Trusts - are trusts which can under state law be revoked by the individual or an entity in (B) above or a court. It includes a trust which ends if some action is taken by the individual.

In the case of a revocable trust:

- A. the entire corpus and the income produced by the corpus of the trust is considered a resource available to the individual.
- B. payments from the trust to or for the benefit of the individual are considered income to the individual, and,
- C. any other payments from the trust are considered to be assets that are transferred. The look back period for transfers is 60 months (see Section 4120).

- IV. Irrevocable Trusts - are trusts which cannot in any way be revoked by the individual or entity in (B) above.

In the case of irrevocable trusts:

- A. if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the following rules apply:
 - 1. the portion of the corpus that could be paid to or for the benefit of the individual is a countable resource to the individual. The income produced by this portion of the corpus is also a countable resource to the individual.
 - 2. payments actually made from the corpus (or from income produced by the corpus) to or for the benefit of the individual are income to the individual.
 - 3. payments actually from the corpus (or from income produced by the corpus), but not to or for the benefit of the individual, are a transfer of assets. The look back period is 36 months (see Section 4120).

B. if no payment could be made under any circumstances to or for the benefit of the individual the following rules apply:

1. the portion of the corpus from which no payment could be made to the individual is considered to be an asset that has been transferred.

Income on this portion of the corpus from which no payment could be made to or for the individual is also considered to be an asset that has been transferred.

The look back period is 60 months (see Section 4120).

2. the date of the transfer is the date of the establishment of the trust or, if later, the date on which payment is unavailable to the individual.
3. the value of the transfer includes any payments made after the trust is established or payment to the individual is unavailable.

V. Exemptions

The following trusts are exempt from the provisions of A-D above. No transfer is considered to take place as a result of establishing the trust. The income and resources considered available to the individual are those made available by the trust.

A. a trust containing the assets of an individual under age 65 who does or would meet the SSI criteria for disability if:

1. the trust is established for the sole benefit of the individual by the individual's parent, grandparent, legal guardian or a court, and
2. the state will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual after due payment of any legal obligations of the trust.

A trust is considered to be established for the "sole benefit of" the individual if no other individual or entity can benefit from the assets transferred in any way whether at the time the trust is established or at any time in the future. A trust may provide for reasonable compensation to trustees to manage the trust and for beneficiaries after Medicaid has been reimbursed.

The trust may contain assets of individuals other than the disabled individual.

This exemption remains once the individual turns age 65 as long as there are no changes in the terms of the trust once the individual attains age 65. Any assets added as of age 65 are not subject to exemptions under (E).

- B. a trust containing the assets of an individual who does or would meet the SSI criteria for disability if:
1. the trust is established and managed by a non-profit association, and,
 2. a separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds, the trust pools these accounts, and,
 3. the accounts in the trust are established solely for the benefit of the disabled individual by the individual or the individual's parent, grandparent, legal guardian or by a court, and
 4. to the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the state an amount equal to the total amount of medical assistance paid on behalf of the beneficiary after due payment of any legal obligations of the trust.

A trust is considered to be established for the "sole benefit of" the individual if no other individual or entity can benefit from the assets transferred in any way whether at the time the trust is established or at any time in the future. A trust may provide for reasonable compensation to trustees to manage the trust and for beneficiaries after Medicaid has been reimbursed.

An individual age 65 or older is not automatically considered to meet the SSI criteria for disability. This must be determined as in section 3130.

- C. trusts that are set up with retroactive SSI benefits awarded under the ZEBLEY v. SULLIVAN decision.

TRUSTS ESTABLISHED FOR THE INDIVIDUAL BY SOMEONE ELSE

With trusts that are set up for the individual by someone else including those that are set up by will, trust funds are available assets unless the terms of the trust make them unavailable.

If the trust is irrevocable, that is, no member of the assistance unit or any responsible relative residing in the home has the power to revoke the trust arrangement or change the name of the beneficiary, what is available to the client is what is made available according to the terms of the trust.

- I. The terms of the trust may specify the amount/frequency and/or purposes for which the funds may be used or this may be left to the discretion of the trustee(s). The terms of the trust may use a combination of both trustee discretion and specific fund usage.
- II. Of the funds left to trustee discretion, what is available to the client is whatever the trustee makes available.

- III. Funds made available are considered as income or assets in accordance with applicable Medicaid eligibility rule for the situation.
- IV. If the terms of the trust restrict withdrawal by written approval of a judge of the courts, regular withdrawals will be treated as any other income. Irregular withdrawals, in order to be disregarded, must be used to supplement the needs of the person for whom the trust is drawn up.

EXAMPLES:

- A. An individual has a trust fund that was established upon the death of his parents based on their will. From this he is to receive \$500 from the interest each month and \$10,000 every three years to buy a new vehicle. The monthly payments are income. The \$10,000 is used to purchase an excluded asset (the old vehicle is traded in to purchase the new one).

This trust is irrevocable in accordance with the provisions above. The terms of the trust specify the amount, frequency and for part of the payments (the \$10,000) the purpose. Medicaid policy treats interest payments as income and excludes the vehicle as an asset.

- B. A trust was set up for the individual by his father who is deceased. The individual is to receive \$200 per month for as long as the fund lasts. The fund currently has \$140,000. The individual can get all the funds in the trust if there is an emergency.

The \$200 per month is considered income as long as this represents interest income. The remainder of the fund is considered an asset (currently \$140,000) since it can be accessed by the individual.

- C. A trust is set up for the individual by her grandmother. It is irrevocable and the trustee has full discretion in disbursement of the funds (totaling \$75,000) based on the needs of the individual.

Since the trust is irrevocable, what is considered available to the individual is whatever the trustee, in her discretion, makes available.

3330.25VEHICLES

The term "primary vehicle" applies to any vehicle which is used to provide transportation, such as passenger cars, trucks, boats and special vehicles, including those that are unregistered, inoperable or in need of repair.

In determining the assets of an individual or couple, the vehicle is excluded or counted as follows:

I. Total exclusion

Two vehicles are totally excluded regardless of value if each vehicle:

- A. Is needed for employment or to seek employment.
- B. Is needed to secure medical treatment.
- C. Is modified for operation by a person with a disability or is modified for the transportation of a person with a disability.
- D. Is necessary because of climate, terrain, distance, or other similar factors, or to provide transportation to perform essential daily activities.

NOTE: Nursing homes are required to provide Medicaid eligible individuals with any transportation needed to secure medical treatment. Therefore, the total exclusion of two vehicles does not apply to individuals admitted to reside in a nursing home. They may, however, use the "partial exclusion" below. When there is a community spouse at the time of application for nursing care coverage, a vehicle may be totally exempted if it is needed by that spouse for any of the reasons listed above.

The above exclusions apply when a vehicle is temporarily broken down.

II. Partial exclusion

If no vehicle is totally excluded, the fair market value in excess of \$4500 is counted as an asset. The fair market value is established by using the "trade-in value" listed in the "National Automobile Dealers Association's (NADA) Used Car Guide". The individual may prove that the vehicle is worth less than the value listed by NADA by providing verification from two reliable sources.

NOTE: This exclusion involves the fair market value and not the equity in the vehicle. For this reason the individual may wish to exclude the vehicle with the highest value and not the one with the most equity.

III. Other vehicles

Unless excluded, the equity value of any other vehicle is counted. For business vehicles see Section 3330.16.

EXAMPLE:

- A. Ken and Martha have two vehicles that are not excluded. They have a Buick worth \$7000 (FMV) on which they owe \$6000. They also have a Ford worth \$5000 (FMV) that they own free and clear.

3330.25 (cont.)

If the Buick is partially excluded they would be over assets.

\$7000 (FMV/\$1000 equity) - \$4500 exclusion = \$2500

\$5000 (FMV and equity) Ford = \$5000 countable

This results in countable assets of \$7500 from these two vehicles.

If the Ford is partially excluded only \$1500 would be counted against the asset limit.

\$5000 (FMV and equity) Ford - \$4500 exclusion = \$500

\$7000 (FMV/\$1000 equity) Buick = \$1000 countable

- B. Mrs. Johnson has a five year old car that is not totally or partially excluded. The fair market value (FMV) is \$6000. She still owes \$5000 on this.

\$6000 (FMV) - \$4500 exclusion = \$1500 countable asset

Even though the equity is only \$1000, \$1500 is counted as an asset, because of the fair market value.

3330.26 ESCROW ACCOUNTS

Escrow accounts set up by the U.S. Department of Housing and Urban Development (HUD) for families who are participating in the Family Self Sufficiency Program are not considered a countable resource.

Any interest paid on these accounts is not countable income. As long as the individual or couple is receiving any state, federal or other public assistance for housing, they cannot access this amount.

This program is a 5 year program open to all Section 8 housing participants which aims to help the family to become self-sufficient at the end of the 5 year period.

When the account becomes available, it is counted as a resource and/or interest income.

3330.27 INDIVIDUAL DEVELOPMENT ACCOUNTS (IDA)

An IDA is a special bank account that is set up by or for the individual to allow the individual to accumulate funds for specific purposes.

There are 2 types of IDA's in Maine: a Family Development Account (FDA) for TANF recipients and a Demonstration Project IDA which is available to anyone. The Demonstration Project IDA is also known as Assets for Independence Act (AFIA) IDA. Individual contributions to either IDA are matched by state and/or federal funds.

I. Family Development Account (FDA)

- A. any income used by the individual to fund this account is excluded as income.
- B. any asset used by the individual used to fund this account is excluded as an asset including up to \$10,000 of lump sum income remaining in the month following receipt.
- C. any individual contributions that are matched are excluded as income or asset.
- D. accrued interest on FDA funds is excluded as income or asset.
- E. Withdrawals from these accounts at any time must be used for the following purposes in order for the fund to remain an exempt asset. When withdrawals are used for any other purpose this will result in the fund being considered a countable asset effective the month of the withdrawal. The TANF Program determines if this condition is met.
 - (1) expenses for education or job training to attend an accredited or approved post secondary education or training institution;
 - (2) the purchase or repair of a home that is the primary residence;
 - (3) the purchase or repair of a vehicle used for transportation to work or to attend an education or training program;
 - (4) capital to start a small business for any member of the assistance unit 18 years of age or older;
 - (5) health care costs of a member of the assistance unit that are medically necessary and that are not covered by public or private insurance;
 - (6) to address an emergency that may cause the loss of shelter, employment or other basic necessities;

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(7) to address other essential family needs approved by the Department.

II. Demonstration Project Account (AFIA)

- A. only earnings of the individual deposited in an AFIA are excluded as income.
- B. any matched funds are excluded as income or assets.
- C. accrued interest on AFIA funds are excluded as income or assets.
- D. withdrawal from these accounts is allowable only for certain reasons as determined by the agency authorizing this IDA. These reasons include post-secondary educational expenses, acquiring a residence, or expenditures for operating a business.

3330.28 OTHER EXCLUDED ASSETS

The following assets are excluded provided the assets can be identified separately from other countable assets.

- I. Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- II. Judgment payments to members of the Blackfeet and Gros Ventre Tribes of Indians under PL 92-254 and judgment payments distributed to, or held in trust for, members of the Grant River Band of Ottawa Indians in Indian Claims Commission docket numbered 40-K under PL 94-540.
- III. Indian per capita judgment payments under the provisions of PL 93-134.
- IV. The value of assistance to children under the National School Lunch Act as amended by PL 90-302.
- V. The value of assistance to children under the Child Nutrition Act of 1966.
- VI. Any grant or loan to any undergraduate student for education purposes made or insured under any program administered by the Commissioner of Education as provided by section 507 of the Higher Education Amendment of 1968, PL 90-575.
- VII. Payments to volunteers under the Domestic Volunteer Service Act of 1973.
- VIII. Payments received under the Alaska Native Claims Settlement Act to the same extent that those payments are exempt from taxation.
- IX. Value of Federally donated foods distributed pursuant to section 32 of PL 74-320 or section 416 of the Agriculture Act of 1949.
- X. Effective October 1, 1976 the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, or Title V of the Housing Act of 1949 as provided by section 2(h) of PL 94-375.
- XI. Effective October 17, 1975 (pursuant to section 6 of PL 94-114) receipts distributed to members of certain Indian tribes which are referred to in section 5 of PL 94-114.
- XII. VA monthly payments made to or on behalf of Vietnam veterans' natural children regardless of their age or marital status for any disability resulting from spina bifida suffered by such children are excluded from income and resources. Interest earned on unspent payments is not excluded.

- XIII. ACTION, the Federal domestic volunteer agency is involved with a number of volunteer service programs including: VISTA, University Year for Action (UYA), Special and Volunteer Programs, Retired Senior Volunteer (RSVP), Foster Grandparents Program and Senior Companion Program. All benefits from these programs are excluded as income.

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3330.27 con't.

- XIV. Assistance received under the Disaster Relief Act of 1974 (PL 93-288), or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, is excluded in determining countable resources
 - A. for a period of 9 months from the date of receipt;
 - B. interest earned on the assistance is excluded from resources for a period of 9 months beginning on the date the assistance is received;
 - C. the initial 9 month period will be extended for a reasonable period up to an additional 9 months when it is found the individual has good cause for not having necessary repairs or replacement of damaged or destroyed property completed. Good cause exists when circumstances beyond an individual's control prevented the repair or replacement of such property within the 9 month time period.
- XV. Effective March 1, 1990 the value of a domestic commercial transportation ticket received as a gift by an individual (or his or her spouse) and not converted to cash will be excluded in the determination of the individual's assets. Domestic travel is defined as travel among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.
- XVI. Effective January 1, 1990 all Agent Orange settlements as provided for under PL 100-687 and 101-201.
- XVII. Japanese Restitution Payments and German Reparation Payments.
- XVIII. Payments made from any fund established pursuant to a class settlement in the case of *Susan Walker v. Bayer Corp., et al.*, and payments made pursuant to a release of all claims in a case that is entered into in lieu of the class settlement.

When payments are made in lieu of a class settlement, the agreement must be signed by all parties on or before 12/31/97 or 270 days after the date on which a release is first sent to the persons to whom the payment is to be made.

3340

JOINTLY OWNED LIQUID ASSETS

A distinction is made between jointly owned bank accounts and other jointly owned liquid assets, such as stocks and bonds.

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I. Bank Accounts

The funds in a bank account held jointly with others are considered to be owned by each name on the account in proportion to the amount of money they contribute to the account.

The exceptions to this are:

- A. there is documentation of an intent to transfer ownership of funds in an account when a joint name is added. See section 4120.02
- B. if two or more joint holders are eligible individuals or couples the account will be considered owned in equal portions.

If the individual claims that she does not own the money in the account she must provide evidence that this money belongs to the other joint owner(s). If such evidence is provided the individual must remove her name from the account or establish a separate account with the funds she does own. This must be done within 30 days of successful presentation of ownership evidence.

If it is necessary to obtain guardianship, conservatorship or power of attorney for one of the joint owners, the 30 day count will not begin until the process of obtaining guardianship, etc., is completed. If the Department determines that there is no active pursuit of the appointment, the 30 day count will begin.

EXAMPLE:

Mr. and Mrs. Jones have a 33 year old son, John. Because John has to travel a great deal to work he added his parents' names to his savings and checking accounts so they could pay his bills if needed. The Jones' were able to verify that John had deposited from his own money all of the funds in the account and that all of the transactions were for his benefit. They were given 30 days to remove their names from the accounts.

EXAMPLE:

Martha Thompson has a joint checking account with her daughter Jane. Jane has POA for her mother. Jane's paychecks (\$400 monthly) and Martha's Social Security check (\$600) both go into this account. They live together and split expenses. Jane does not need to invoke her POA to access the money in the account. Since only 60% of the money going into the account is from Martha's income, only this percentage of the total balance is considered to be hers. Martha will have 30 days to remove Jane's name or to establish an account of her own, with her portion of the funds.

If the individual is unable to demonstrate that funds were contributed by the other joint owner, all funds are considered to be available to the individual.

II. Other jointly owned liquid assets

For other types of jointly owned liquid assets, each joint owner owns an equal share of the asset. For example, if there were 3 joint owners each would own a one-third interest in the asset.

EXAMPLE:

Two sisters are applying for assistance. They have stocks left to them by their brother. This is verified by a copy of his will. Instead of the entire value being counted by each, one half of the value counts for each sister.

If the individual or couple establish that other joint owners refuse to sell jointly owned property, the value of the asset is excluded. This exclusion does not apply if any joint owner has the ability to convert the jointly owned asset to cash without the permission of the other owners or if the joint owners are a couple. See the policy on transfers for a possible transfer penalty the individual has established joint ownership.

3350 DEEMING OF ASSETS

When an eligible individual is living in the same household with an ineligible spouse, or if the eligible individual is a child under age 18 residing in the same household with a parent, the assets of the spouse or parent must be included in determining eligibility.

The assets of an ineligible spouse, or parent living with the individual, are deemed to the individual and are combined with the applicant's own assets.

3351 EXCLUSIONS TO DEEMING PROCESS

The assets listed below are excluded in determining the amount of the ineligible spouse's or ineligible parent's assets:

- I. Assets excluded in Section 3330 are also excluded here.
- II. Assets owned by a stepparent.
- III. Pension Funds (IRA's & Keogh's) which belong to the ineligible spouse or ineligible parent.
- IV. Assets of an ineligible spouse are not considered in determining eligibility for Waiver Programs on the 1st day of the month in which the individuals are determined to be in a nursing care status.
- V. Parent's assets are not considered in determining eligibility for the "Katie Beckett" waiver.
- VI. If the asset is only in the child's name, then it does not effect the parent's eligibility since there is no deeming from child to parent.

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- VII. In this process some assets may be deducted for legal parents. But, as noted in #2 above, no assets are deducted for a stepparent.

The non-excluded assets of the parent in excess of:

\$2000 (if the child is living with one legal parent) or
\$3000 (if the child is living with both parents)

are deemed to the child and combined with the child's own non-excluded assets. The combined amount of deemed and own assets must be under the \$2000 limit.

3352 DURATION OF DEEMING

- I. Deeming ends the month after the ineligible spouse and eligible individual cease to live together for any reason.
- II. Deeming from parent to child stops the month after the child reaches 18 or the month after the child no longer resides with the parents.

3353 COUPLES RESIDING IN SAME ROOM IN NURSING HOME

If deeming the assets of a couple residing in the same room in a nursing home makes both ineligible, ONE of the individuals can reapply for assistance.

This will mean that the other individual is an ineligible spouse and eligibility for the individual would be based on the individual's own assets. The individual could be eligible in the month following the month of denial.

3360 TRANSFER OF ASSETS

Since 7/1/88 individuals and couples living in the community are not affected by transfer of assets unless one or both receive nursing care services within 36 months of the transfer. (see Section 4120 and 5050)

3370 ASSET LIMITS

Assets can be under the following limits on any day of the month to be eligible for that month.

\$2000 for an individual not married or not living with a spouse (Including an individual who is a child.)

\$3000 for an individual living with an ineligible spouse or an eligible couple.

3370 cont.

For individuals or couples to be eligible under the QMB, SLMB or QDWI Programs, assets must be under twice the SSI asset limit.

3400 INCOME

Income is the receipt of money, or the value of goods and services, which can be used to provide for food, shelter or clothing.

Income is counted in the month it is received, whether it is for a previous, current or future period. Any portion remaining is counted with all other assets in the following month. (See Section 3330.12). This provision pertains to all types of income including lump sums from wages, inheritances and lottery winnings.

The exception to the month received rule is direct deposits and other electronic transfers of funds. These are counted for the month they were intended to be received even if they are posted early or late.

Child support payments are income to the child(ren) for whom the payments are intended.

3401 GARNISHMENT OF INCOME

Income is counted even if it is garnished (income is withheld by administrative or court order to pay a creditor or overpayment by a government agency). If the individual was receiving medical assistance at the time that the overpayment occurred, the reduced amount of payment is used in determining the amount of income.

3402 DETERMINATION OF MONTHLY GROSS INCOME

The gross amount of income (before payroll or other deductions) is used. The source of income and the time frame in which it is received must be considered in determining the gross income for a particular month. Income, received less frequently than monthly, must be counted in the month received unless it is contract income.

For prospective coverage, income anticipated to be received over the eligibility period must be used.

3410 EARNED INCOME

Income received in payment for the labor or services of an individual. It includes cash payments, wages, salaries, commissions, payments or refunds of earned income tax credits, sheltered workshop wages, profits from self-employment, severance, contractual payments and deferred compensation.

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3410 cont.

A living allowance or stipend from AmeriCorps is treated as a wage.

3411 SELF-EMPLOYMENT INCOME

Income received by a self-employed individual who is engaged in a business enterprise. This includes income from rental property reported to the IRS on Schedule C. (Rental income reported to IRS on Schedule E or not reported to IRS is unearned income) .

If the most recent tax return is available showing the profit or loss, and there have been no major changes, then the monthly gross income is determined by dividing the adjusted gross income amount by 12.

If a tax return is unavailable, the profits have changed considerably, or the business was started after the beginning of the tax year, the most detailed records showing the net profit should be used. The records may include ledger sheets, receipt books, self-employment work sheets, or any reasonable form of documentation. All deductions allowed by the Internal Revenue Service, including depreciation, may be used.

The net loss from one source of self-employment is deducted against the individual's or couple's other earnings including other sources of self-employment income. This applies whether a couple filed a joint income tax return or separate returns, and regardless of which member of the couple listed below incurred the loss:

- I. an eligible couple,
- II. an eligible individual with an ineligible spouse, or
- III. two parents

Do not allow a deduction for losses from a prior year.

3412 REGULAR INCOME

Income received by an employee at regular intervals and in the same amount each pay period. This includes income of salaried employees and hourly wage earners who work the same number of hours at the same hourly pay each week.

The amount of income to be used is based on the frequency it is received. If the individual is paid once each month, that is the monthly gross income for the month in which it is received.

When income is received twice a month (usually the first and the fifteenth of each month), multiply the gross wages by 2.

When income is received biweekly, multiply the gross wages by 2.15.

When income is received weekly, multiply the gross wages by 4.3.

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3413 FLUCTUATING INCOME

Income received by an employee in different amounts each pay period or at irregular intervals. The differences may be due to the number of hours worked, hourly wage rate, output (such as piecework and some types of commissions) or the number of employers (such as baby sitting).

In these cases, the individual's income must be examined over the broadest period of time possible. If the "year to date" (YTD) figure is an accurate reflection of the current situation, divide

the amount by the number of weeks the YTD covers and budget this average as regular weekly income.

If the YTD is not accurate, the average weekly income should be based on a review of income representative of the current situation. If there are unusually high or low weeks then an exploration of how likely they are to continue must be made and their inclusion or exclusion documented.

3414 CONTRACT INCOME

Income received by employees for a set period of time. It may be a full year or for a shorter term, such as school teachers.

Divide the most recent contract income by the length of the term of the contract to determine the monthly average.

3415 SEASONAL INCOME

Income that is not received year round. During the off-season, no income is received from the seasonal occupation.

Seasonal income is budgeted for the period that the individual is actually working. To determine an anticipated amount, use the income received for the most recent season of employment, taking into consideration any expected increases or decreases in income.

3420 UNEARNED INCOME

Income that is not received in payment for the labor or services of an individual. It includes Social Security, Veteran's Benefits, pensions, dependent's allotments, maintenance agreements, contributions, support payments, annuities, dividends, interest, income-in-kind, net income from providing room and board (the difference between the amount paid and expenses) and rental income reported or filed on Schedule E of the Income Tax Form.

Dividend or interest income is not reduced by any service charge to the bank accounts.

Interest on Series E, EEE and H Savings Bonds is not counted as income at any time. When these bonds are redeemed, the interest is a countable asset.

Interest on Series HH Savings Bonds is paid by direct deposit, semi-annually. For bonds that total \$2000, or less, the interest would be excluded (see Section 3430.06 #1). For bonds exceeding a total of \$2000 the interest would be considered unearned income in the month received.

3430 EXCLUDED INCOME

This is that portion of monies, goods or services that is not used in determining eligibility.

3430.01VALUE OF CERTAIN FOODS AND MEALS

- I. Home produce for personal consumption.
- II. Meals, reduction in price of meals and food commodities distributed under the National School Lunch Act, as amended by PL 90-302 and Child Nutrition Act of 1966.
- III. Value of Food Stamps or food distributed by the Department of Agriculture.
- IV. Value of food or vouchers for food under the WIC Program (Child Nutrition Act of 1966).
- V. Value of meals or reduction in price of meals and other benefits from nutrition projects under the Older Americans Act of 1965 as amended by PL 95-478.

3430.02ASSISTANCE FROM FEDERAL, STATE OR POLITICAL SUBDIVISIONS

- I. Assistance based on need. This includes Home Based Care Funds (PL 1620), General Assistance and assistance to Indian tribes.
- II. In-kind or cash assistance received as the result of a disaster declared by the President of the United States.
- III. Assistance with fuel bills or weatherization assistance received through the Home Energy Assistance Program (HEAP).
- IV. Value of assistance for housing under the Housing Authorization Act of 1976 (PL 94-375) or Housing Act of 1937 as amended by PL 92-213.
- V. Value of relocation assistance under the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (PL 91-646 Title II). This does not include payment for the fair market value of the property.
- VI. Any assistance provided in cash or in-kind under the Emergency Conservation Services (ECS) Program (PL 93-644, Sections 222 and 95-568) including cash to prevent fuel cut-offs.
- VII. Per capita distribution payments, receipts from trust lands and dividend payments to members of various native American and Indian tribes such as Blackfeet, Gros Ventre, Grand River Band, Alaskan Native Claims Settlement Act under the provisions of Distribution and Judgement Funds (PL 92-254 Sections 4, 6, and 7), Receipts from Lands Held in Trust for Indian Tribes (PL 94-114, Section 6).
- VIII. Effective January 1, 1990 all Agent Orange Settlements as provided for under PL 100-687 and 101-201.

3430.02 cont.

- IX. SSI benefits received by a spouse, parent or other family member when determining non-nursing care assistance.
- X. AFDC benefits received by a spouse, parent or other family member. These people are also not counted as members of the assistance unit during the budgeting process.
- XI. Payment by JTPA for supportive services such as child care, transportation, medical care, meals and other reasonable expenses.

NOTE: All other payments from JTPA are considered income.

- XII. Social Security benefits received by some disabled widow(er)s who are not receiving Medicare (see Section 3200.08)
- XIII. 1973 AABD income exclusion in effect 12/73 for blind or disabled individuals receiving SSI at that time if greater than above exclusions (mandatory cases). This includes several disregards. Contact the Program Director of Medical Assistance if an individual is in this situation.
- XIV. VA monthly payments made to or on behalf of Vietnam veterans' natural children regardless of their age or marital status for any disability resulting from spina bifida suffered by such children are excluded from income and resources. Interest earned on unspent payments is not excluded.
- XV. A wage or salary from Community Service Employment is earned income. Anything else is excluded. Community Service Employment is a Program for older Americans authorized under Chapter 35, Title 42 of U.S. Code.
- XVI. ACTION, the Federal domestic volunteer agency is involved with a number of volunteer service programs including: VISTA, University Year for Action (UYA), Special and Volunteer Programs, Retired Senior Volunteer (RSVP), Foster Grandparents Program and Senior Companion Program. All benefits from these programs are excluded as income.

3430.03 INCOME OF CHILDREN ELIGIBLE FOR SSI-RELATED COVERAGE

- I. The first \$400 per month of earned income for a student attending school regularly as defined by the learning institution.
- II. One-third of child support, including a military allotment. The payment may be voluntary or court ordered.
- III. The \$50 pass through of child support paid to the family when other family members are on AFDC or receiving AFDC-related coverage.

3430.04 GRANTS, LOANS AND SCHOLARSHIPS

- I. Grants and loans to undergraduate students under any program administered by the U.S. Secretary of Education (Higher Education Amendments of 1968 PL 90-575 - Title V).

The grants and loans are:

- A. Basic Education Opportunity Grant Program (Pell Grants)
- B. National Direct Student Loan Program (Perkins Loans)
- C. Supplemental Education Opportunity Grant Program (SEOG)
- D. Guaranteed Student Loan Program
- E. State Student Loan Program

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Verification of participation in any of these programs may be obtained from the student or the educational facility.

The tuition and fees portion of all grants, loans and scholarships and fellowships to graduate students are excluded.

- II. Tuition and fee portions of grants, scholarships and fellowships to undergraduates which are not administered by the Secretary of Education are excluded.

3430.05 REBATES/REFUNDS

- I. Rebates by any public agency of taxes or rent rebate on real property.
- II. Income tax refunds.

NOTE: These are countable assets on the first day of the month following the month received.

3430.06 PORTIONS OF EARNED AND UNEARNED INCOME

- I. Earned or unearned income, from a single source, which is received irregularly (receipt cannot reasonably be expected) or infrequently (no more than once during a calendar quarter). This amount is not to exceed \$20.00 per month for unearned income and \$10.00 per month for earned income.
- II. Interest on funds designated for burial or interest earned on the value of agreements representing the purchase of burial spaces (provided the burial spaces are excluded from assets and provided the interest is left to accrue) as long as there is no break in the receipt of assistance. (See Section 3330.04.)
- III. Earned income which is used to meet expenses of producing such income by a person who is blind or disabled. These expenses include transportation to and from work (in accordance with IRS guidelines or actual cost if not using own car), cost of caring for a guide dog, child care, licenses, lunches, Braille instruction, professional association dues, income taxes, tools, union dues and computer training.
- IV. That portion of earned or unearned income needed to fulfill a plan for self-support approved by Vocational Rehabilitation or the Social Security Administration for an individual who is disabled or blind.

- V. VA benefits have special treatment.

- A. Excluded as income is that portion of a VA benefit (Pension or Compensation) which is paid to disabled veterans, their spouses, widows or parents as an Aid and Attendance, Housebound Allowance or payments resulting from Unusual Medical Expenses.

There is an exception to this rule that applies to a single veteran with no dependents or their surviving spouse with no dependents who resides in a State Veteran's Nursing Home.

If that veteran or spouse of a veteran receives a benefit in excess of \$90 per month based on aid and attendance or unusual medical expenses, any payment in excess of the \$90 per month is counted as income in determining the cost of care. Such income will be excluded when determining eligibility for Medicaid coverage.

- B. VA benefits for dependents. VA may increase the amount of a benefit if the veteran or surviving spouse has a dependent.

- (1) When the increase is included in the payment to the veteran or surviving spouse and the dependent resides with the veteran or surviving spouse. This is called an "augmented benefit".

The share attributed to a dependent is income to the dependent only.

If the dependent does not live with the veteran or surviving spouse, the dependent's share is not income to anyone.

3430.06 cont.

- (2) When the dependent of a veteran or surviving spouse does not live with the veteran or surviving spouse VA may pay the increase directly to the dependent. This is called an “apportionment” or “apportioned benefit”. This payment is unearned income to the dependent.

- VI. Annual Cost of Living increases (COLA) that take effect in January, February, or March will be excluded for the following groups until the month following the month that the new annual Federal Poverty Levels are published in the Federal Register: QMB, SLMB, SOBRA, Poverty Level children (income equal to or less than 125% FPL) and age 6 through 18.

For example, if poverty levels are published in February, the COLAs are not counted until April. This applies to applicants and recipients. This exclusion applies to COLAs such as Title II (Social Security) and Veterans Benefits.

- VII. SSA / RAILROAD RETIREMENT AND FEDERAL POVERTY LEVEL (FPL) COLAS

When the annual SSA / RR COLA and the FPL COLA adjustments result in ineligibility for elderly and disabled individuals eligible for and receiving Medicaid prior to the FPL changes, the amount of SSA / RR received prior to the most recent COLA adjustment is used to determine eligibility. This disregard does not apply when determining a cost of care.

This adjustment applies to elderly and disabled individuals using the Federal Poverty Level as an income limit for Medicaid including the Medicare Buy-In. This also applies to individuals Awaiting Placement for Residential Care, residing in Cost Reimbursed Boarding Homes and Adult Family Care Homes whose income goes over the Medicaid rate.

This disregard continues until:

- I. The individual loses Medicaid coverage for any reason for 3 consecutive months. Retroactive coverage counts as a month of coverage for use of this disregard, or,
- II. After the annual SSA/RR and FPL COLA adjustments, SSA/RR income is less than the FPL.

The individual may again be eligible for the disregard in later years if they again become ineligible due to COLA changes in SSA / RR and FPL.

If the individual receives added or increased income from a source other than SSA / RR at the time of the COLA adjustments, this disregard can be used only if ineligibility is caused by the change in SSA / RR income.

When budgeting for a couple this disregard applies to the SSA/RR of both individuals even though disregarding the COLA increase of only one member of the couple would result in keeping Medicaid coverage for the couple.

3430.07 PAYMENTS FROM THIRD PARTIES

- I. Foster care payments to a provider of foster care for a child or adult who is not an eligible individual but who is living with an eligible individual and who was placed there by a public or private agency.
- II. Japanese Restitution payments and German Reparation payments.
- III. Compensation of any kind to volunteers under the ACTION program. This includes the Foster Grandparent Program, Retired Senior Volunteer Program (RSVP), Service Corps of Retired Executives and Active Corps of Executives (SCORE and ACE), the Action Cooperative Volunteer Program (ACV), Senior Companion Program, Volunteers in Service of America (VISTA) and University Year for Action (UYA).
- IV. All payments made on behalf of an individual under a credit life or credit disability insurance policy. (i.e., payment of car payments or mortgage when you become disabled).
- V. All payments made to replace income that has been lost, destroyed or stolen.
- VI. Vendor payments (payments for goods or services provided to an eligible individual or couple which are made directly to a vendor by a third party) unless such payments are used to purchase food, clothing, or shelter. If these payments can be used for these items, they are counted as unearned income-in-kind.
- VII. Money received under the Radiation Exposure Compensation Act for injuries or death resulting from radiation due to nuclear testing and uranium mining.

3430.08 OTHER EXCLUDABLE INCOME

- I. Money borrowed by an individual. The proceeds of the loan are not income in the month borrowed, however, they are considered countable assets in the following month.
- II. Money received as a result of selling, replacing or exchanging an asset.
- III. Money received as the repayment of the principal of a loan is not income in the month received. Any amount retained in the following month is considered a countable asset. Money received as interest payments is considered income in the month received.

EXAMPLE:

A couple sells their home and holds a mortgage at 10%. They receive \$315 per month as a mortgage payment. Of that amount, \$200 is interest and must be counted as

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income in the month received. The remaining \$115 is repayment of the principal and is excluded income for the month. Any portion of the principal remaining in the following month is a countable asset for that month.

- IV. Benefits received for medical care, services and social services.
- V. Effective March 1, 1990 the value of a domestic commercial transportation ticket received as a gift by an individual (or his or her spouse) and not converted to cash will be excluded in the determination of the individual's income. Domestic travel is defined as travel among the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.
- VI. Any interest paid on HUD escrow accounts (Family Self-sufficiency program). Interest is deferred as long as the individual or couple continues to receive federal, state or other public assistance for housing for a period of 5 years.
- VII. Payments made from any fund established pursuant to a class settlement in the case of Susan Walker v. Bayer Corp., et al., and payments made pursuant to a release of all claims in a case that is entered into in lieu of the class settlement.

When payments are made in lieu of a class settlement, the agreement must be signed by all parties on or before 12/31/97 or 270 days after the date on which a release is first sent to the persons to whom the payment is to be made.

3430.09 INDIVIDUAL DEVELOPMENT ACCOUNTS (IDA)

Contributions to an Individual Development Account (IDA). See the asset rule for a definition of an IDA.

- I. Family Development Account (FDA for TANF recipients)
 - A. any income used by the individual to fund this account excluded as income.
 - B. any asset used by the individual used to fund this account is excluded as an asset including up to \$10,000 of lump sum income remaining in the month following receipt.
 - C. any individual contributions that are matched are excluded as income or asset.
 - D. accrued interest on FDA funds is excluded as income or asset.
 - E. Withdrawals from these accounts at any time must be used for the following purposes in order for the fund to remain an exempt asset. When withdrawals are used for any other purpose this will result in the fund being

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considered a countable asset effective the month of the withdrawal. The TANF Program determines if this condition is met.

- (1) expenses for education or job training to attend an accredited or approved post secondary education or training institution;
- (2) the purchase or repair of a home that is the primary residence;
- (3) the purchase or repair of a vehicle used for transportation to work or to attend an education or training program;
- (4) capital to start a small business for any member of the assistance unit 18 years of age or older;
- (5) health care costs of a member of the assistance unit that are medically necessary and that are not covered by public or private insurance;
- (6) to address an emergency that may cause the loss of shelter, employment or other basic necessities;
- (7) to address other essential family needs approved by the Department.

II. Demonstration Project Account (AFIA)

- A. any income of the individual deposited in an AFIA are excluded as income.
- B. any matched funds are excluded as income or assets.
- C. accrued interest on AFIA funds are excluded as income or assets
- D. withdrawal from these accounts is allowable only for certain reasons as determined by the agency authorizing this IDA. These reasons include post- secondary educational expenses, acquiring a residence, or expenditures for operating a business.

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3440 DISREGARDS

The following are deducted from the individual's or couple's gross income in this order:

3440.01 FEDERAL DISREGARD

Twenty dollars a month from earned or unearned income.

NOTE: The \$20.00 disregard is not applied to income based on need. This means there is no \$20.00 exclusion of a VA Pension or Veteran's Financial Assistance (which is based on need). The \$20.00 disregard does apply to VA Compensation (which is not based on need).

No Federal Disregard is given to individuals or couples living in the household of another when income-in-kind is the only income considered. If the individual or couple has any other income, the Federal Disregard, up to a maximum of \$20.00 may be given.

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3440.02 IMPAIRMENT-RELATED WORK EXPENSES (IRWE)

Impairment-Related Work Expenses (IRWE) are to be deducted from a SSI-related disabled individual's gross earnings. IRWE allowable deductions and limits are outlined in Appendix 3-2.

3440.03 EARNED INCOME DISREGARD

Sixty-five (\$65) is deducted from earned income. One half (1/2) of the remaining earnings is also disregarded.

EXCEPTIONS:

- I. Deeming to eligible child.
- II. Sheltered workshop.

3440.04 STATE DISREGARD

The State of Maine also allows an added deduction of \$55.00 for an individual and \$80.00 for a couple.

3440.05 SPECIAL GROUP DISREGARDS**PICKLE DISREGARD**

Individuals or couples covered under the Pickle Amendment (see Appendix 3-3) have disregarded all Cost of Living Adjustment's (COLA's) to Social Security benefits received since the closure of concurrent entitlement for SSI or State Supplement and Social Security. This disregard applies also to COLA increases of the spouse even if the spouse is not eligible as a PICKLE.

DISABLED ADULT CHILDREN DISREGARD

Individuals or couples receiving Social Security benefits as Disabled Adult Children have a portion of their Social Security benefits disregarded. The amount of the disregard equals the Social Security increase due to the initial DAC Award causing the loss of SSI or State Supplement.

The individual or couple lose this disregard when they marry unless they marry another DAC.

DISABLED WIDOW(ER) DISREGARD

The amount of the disregard as a Disabled Widow(er) is the amount of the Social Security benefits that caused the loss of SSI or State Supplement benefits.

3440.05 cont.

Disabled Widow(er)s maintain this status when they marry as long as they are still disabled.

3440.06 SHELTER WORKSHOP DISREGARD

| | | |
|----------|------|---|
| Subtract | \$20 | Federal Disregard, if not previously deducted |
| Subtract | \$50 | from remaining sheltered workshop income |
| Subtract | 1/2 | of remaining sheltered workshop income |

3440.07 RESERVED

3500 BUDGETING PROCESS

Before a budget can be completed, two factors must be explored. These involve the relationship of the individuals in the household and the amount and types of income each individual has.

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3510 RESERVED

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3520 BASIC BUDGET FOR AN INDIVIDUAL

When an eligible individual (not an eligible child) lives alone or with people other than a spouse, s/he may get Medicaid coverage (if otherwise eligible) by meeting SSI or State Supplement income criteria in 3520.01, by meeting the income criteria for Medicaid coverage only (3520.02, .03), or by being eligible under Medically Needy (3520.08). An individual may be eligible for a Medicare Buy-in by meeting special rules explained in 3520.04, .05, .06, .07, and by using the budgeting process in 3520.03.

3520.01 BUDGET FOR SSI OR STATE SUPPLEMENT PAYMENT

I. Combine all gross unearned income.

II. Subtract the \$20 Federal Disregard where applicable.

The remainder is the net unearned income.

III. Combine all gross earned income.

IV. Subtract any remainder of the \$20 Federal Disregard not deducted from unearned income.

V. Subtract any Impairment-Related Work Expenses (IRWE) outlined in Appendix 3-2.

VI. Subtract the earned income disregard of \$65.

VII. Divide the remaining earned income by 2.

The remainder is net earned income.

VIII. Combine net earned and unearned income.

The remainder is total net income.

If total net income is below the appropriate SSI Income Standard for 1, based on living arrangement, the individual meets the income criteria for an SSI payment.

If receiving SSI, the individual also gets a State Supplement. If over income for SSI, s/he may be eligible for a State Supplement only payment.

IX. Subtract the State Disregard for 1 (\$55), except for those in living arrangements D,E, F, G, H (see Section 7020).

The remainder is countable income.

If countable income is below the appropriate State Supplement Income Standard for 1, based on living arrangement, the individual meets the income criteria for the State Supplement only payment (see Section 7000 for more information on State Supplement eligibility).

3520.02 BUDGET FOR MEDICAID COVERAGE UNDER PICKLE AMENDMENT OR DISABLED ADULT CHILD (DAC) OR DISABLED WIDOW(ER) (DWB) DISREGARDS

Follow the budgeting process in 3520.01, steps I - IX, except that the PICKLE and/or DAC, DWB income disregard(s) are subtracted after step 1 and before step 2 (Federal Disregard).

If countable income is below the State Supplement Income Standard, the individual is Medicaid eligible .

3520.03 BUDGET FOR MEDICAID COVERAGE (SOBRA)

Individuals who are not eligible under 3520.01 or 3520.02 or who choose not to apply for SSI/State Supplement, may get Medicaid coverage (if otherwise eligible) by using the following budget process.

- I. Combine all gross unearned income.
- II. Subtract the \$20 Federal Disregard, where applicable.

The remainder is the net unearned income.
- III. Subtract any allocation to an ineligible child. An ineligible child is one who is not receiving TANF, SSI or State Supplement.

To determine the allocation, deduct each child's countable income from the maximum child allocation [see Chart III(b)]. The remainder for each child is combined to determine the total allocation. The remainder is the individual's net unearned income.

- IV. Combine all gross earned income.
- V. Subtract any remainder of the \$20 Federal Disregard not deducted from the unearned income.
- VI. Subtract any remainder of the ineligible child allocation not deducted from the unearned income.
- VII. Subtract any Impairment-Related Work Expenses (IRWE) outlined in Appendix 3-2.
- VIII. Subtract the earned income disregard of \$65.

- IX. Divide the remaining earned income by 2. The remainder is net earned income.
- X. Combine the net earned and unearned income.
- XI. Subtract the State Disregard for 1 (\$55).

The remainder is the countable income.

If countable income is equal to or below 100% of the Federal Poverty Level for 1 and eligibility is based on age or disability, the individual is SOBRA Medicaid eligible.

An individual whose eligibility is based solely on blindness is not SOBRA eligible. However, a blind individual who also meets the SSI disability criteria can receive SOBRA coverage.

3520.04 QMB COVERAGE

For individuals whose assets are below \$4000 and whose income is equal to or below 100% of the FPL for 1 (see Chart VI), QMB eligibility exists as long as they are in receipt of, or entitled to, Medicare Part A (see Appendix 3-1.)

An individual whose eligibility is based solely on blindness can be QMB eligible.

NOTE: Eligibility for QMB coverage begins the month after a determination is made.

3520.05SLMB COVERAGE

For individuals whose assets are less than \$4000 and whose income is over 100% and equal to or less than 120% of FPL and are entitled to, or in receipt of, Medicare Part A.

An individual whose eligibility is based solely on blindness can be SLMB eligible.

NOTE: Can be retroactive for 3 months but not prior to 1/1/93.

3520.06QUALIFYING INDIVIDUALS (QI)

There are 2 groups of Qualifying Individuals:

- I. Income and asset eligibility for QI, Part 1, exists for individuals whose assets are less than \$4,000 and whose income is more than 120% FPL but less than 135% FPL. The individual must be entitled to or in receipt of Medicare Part A.

An individual whose eligibility is based solely on blindness can be QI Part 1 eligible.

NOTE: Eligibility for QI Part 1 coverage begins the month of application up to three months retroactive, but not before January, 1998. An individual cannot receive coverage under Medicaid and QI at the same time.

If the individual receiving QI Part 1 coverage becomes eligible for Medicaid, for example by meeting a deductible, s/he is opened for Medicaid effective the date s/he is eligible. Action should then be taken to close QI Part 1 coverage.

The Medicaid may be opened retroactively, even if this results in overlapping coverage in the retroactive period. In this situation, there may be some months in which the individual is covered by both QI Part 1 and Medicaid due to the system delay in closing QI Part 1 coverage. Action should be taken to close QI Part 1 coverage if Medicaid will continue prospectively.

- II. Income and asset eligibility for QI Part 2 exists for individuals whose assets are less than \$4,000 and whose income is equal to or more than 135% of the Federal Poverty Level (FPL) and less than 175% FPL. The individual must be entitled to or in receipt of Medicare Part A.

An individual whose eligibility is based solely on blindness can be QI Part 2 eligible.

- A. The individual is eligible for help in paying for their Medicare Part B premium in the amount listed in Chart III (g).

3520.06 cont.

This benefit is authorized once a year as an annual payment.

This benefit is issued if the individual/couple is eligible in the month they apply or the following month.

- B. This benefit cannot be authorized in the same month in which the individual is receiving Medicaid coverage.
- C. The individual must apply each year for which they are requesting this benefit except that for applications received in December, the benefit for that year and the next year are authorized. For example, for an application received in 12/98, benefits are authorized for 1998 and 1999.

3520.07QDWI COVERAGE

If the countable income of a Qualified Disabled and Working Individual (QDWI) does not exceed 200% of the Federal Poverty Level for 1 (see Chart VI), and countable assets are less than or equal to \$4000, then the Department will pick up the cost of Medicare Part A premiums, only. See Appendix 3-1 regarding other eligibility criteria.

3520.08MEDICALLY NEEDY COVERAGE FOR AN INDIVIDUAL

If an individual is not Medicaid eligible under SOBRA, the Protected Income Level (PIL) for 1 (see Chart V) is deducted from the countable income. The result is used to determine the amount of the deductible to be met prior to beginning Medically Needy coverage. (See Section 6000.)

3530 BASIC BUDGET FOR A COUPLE OR FOR AN ELIGIBLE INDIVIDUAL WITH AN INELIGIBLE SPOUSE

A couple /individual may get Medicaid coverage (if otherwise eligible) by meeting SSI or State Supplement income criteria in 3530.01, by meeting income criteria for Medicaid coverage only (3530.02, .03), or by being eligible under Medically Needy (3530.08). A couple/individual may be eligible for a Medicare Buy-In by meeting special rules explained in (3530.04, .05, .06, .07), and by using the budgeting process in 3530.03.

3530.01 BUDGET FOR SSI OR STATE SUPPLEMENT PAYMENT**I. Budget for an Eligible Couple**

Follow steps 1 – IX in Section 3520.01, except that the income of the couple is used and the State Disregard for 2 is used in step IX (\$80). Net income is compared to the SSI Income Standard for 2 based on living arrangement. If ineligible for SSI, countable income is compared to the State Supplement Income Standard for 2 based on living arrangement.

II. Budget for an Eligible Individual With Ineligible Spouse

Determine the eligible individual's countable income, using steps 1-9 in Section 3520.01. If this figure is less than the SSI or State Supplement Income Standard for 1, based on the living arrangements [see Chart III(d)], the individual is potentially eligible for SSI or State Supplement. This is a pretest for SSI or State Supplement payment. The eligible individual must have income less than the SSI or State Supplement Income Standard for 1. The SSI or State Supplement budgeting process continues with deeming income from the ineligible spouse.

A. Combine all the ineligible spouse's unearned income.

B. Subtract any allocation to an ineligible child. An ineligible child is one who is not receiving TANF, SSI or State Supplement. To determine the allocation, deduct each child's countable income from the maximum child allocation [see Chart III(b)].

The remainder for each child is combined to determine the total allocation.

NOTE: For SSI or State Supplement eligibility, only the ineligible spouse can allocate income to an ineligible child.

The remainder is the spouse's net unearned income.

C. Combine all of the ineligible spouse's earned income.

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- D. Subtract any remaining child allocation from the earned income.

The remainder is the spouse's net earned income.

- E. Combine the individual's gross unearned income with the spouse's net unearned income (after the child allocation has been deducted).

- F. Subtract the \$20 Federal Disregard, where applicable.

- G. Combine the individual's gross earned income with the spouse's net earned income (after any remaining child allocation is deducted).

- H. Subtract any remainder of the \$20 Federal Disregard not deducted from the unearned income.

- I. Subtract any Impairment-Related Work Expenses (IRWE) outlined in Appendix 3-2.

- J. Subtract the earned income disregard of \$65.

- K. Divide the remaining earned income by 2.

The remainder is the net earned income.

- L. Combine the net earned and unearned income.

This is the total net income.

If total net income is below the appropriate SSI Income Standard for 2, based on living arrangement, and the individual met the pretest, the eligible individual meets the income criteria for an SSI or State Supplement payment.

If receiving SSI, the eligible individual also gets a State Supplement. If over income for SSI, s/he may be eligible for a State Supplement only payment.

- M. Subtract the appropriate State Disregard for 2 (\$80), except for those in living arrangement D, E, F, G (see Section 7020).

The remainder is the countable income.

If the countable income is below the appropriate State Supplement Income Standard for 2 [see Chart III(d)] and the individual met the pretest, the eligible individual meets the income criteria for the State Supplement only payment (see Section 7000 for more information on State Supplement).

3530.02 BUDGET FOR MEDICAID COVERAGE UNDER PICKLE AMENDMENT OR DISABLED ADULT CHILD (DAC) OR DISABLED WIDOW(ER) (DWB) DISREGARDS

Follow the budgeting process in 3530.01 for a couple or for an eligible individual with an ineligible spouse, as applicable, except that the PICKLE and/or DAC/DWB income disregard(s) are subtracted before the Federal Disregard.

If countable income is below the State Supplement Income Standard for 2, the individual is eligible.

3530.03 BUDGET FOR MEDICAID COVERAGE (SOBRA)

A couple or an eligible individual with an ineligible spouse who is not eligible under 3530.01 or 3520.02 or who chooses not to apply for SSI/State Supplement, may get Medicaid coverage (if otherwise eligible) by using the following budget process.

- I. Combine all gross unearned income of the couple.
- II. Subtract the \$20 Federal Disregard where applicable.
- III. Subtract any allocation to an ineligible child. An ineligible child is one not receiving TANF, SSI or State Supplement. To determine the allocation, deduct each child's countable income from the maximum child allocation [see Chart III(b)]. The remainder for each child is combined to determine the total allocation.

The remainder is the net unearned income.

- IV. Combine all gross earned income of the couple.
- V. Subtract any remainder of the \$20 Federal Disregard not deducted from unearned income.
- VI. Subtract any remainder of the ineligible child allocation.
- VII. Subtract any Impairment-Related Work Expenses (IRWE) outlined in Appendix 3-2.
- VIII. Subtract the earned income disregard of \$65.
- IX. Divide the remaining earned income by 2.

The remainder is net earned income.

X. Combine the net earned and net unearned income.

XI. Subtract the State Disregard for 2 (\$80).

The remainder is countable income.

If the countable income is equal to or below 100% of the Federal Poverty Level for 2 (see Chart VI) and eligibility is based on being aged or disabled, the couple is eligible for SOBRA Medicaid coverage. An individual whose eligibility is based solely on blindness is not SOBRA eligible. However, a blind individual who also meets the SSI disability criteria can receive SOBRA coverage. QMB eligibility also exists for either member of the couple who has Medicare. (See Appendix 3-1.)

3530.04QMB COVERAGE

For a couple, or an eligible individual with an ineligible spouse, the assets of the 2 spouses must be below \$6000 and their income must be equal to or below 100% of the FPL for 2 (see Chart VI). QMB eligibility exists as long as the couple/eligible individual is receiving or is entitled to Medicare Part A. (See Appendix 3-1.)

An individual whose eligibility is based solely on blindness can be QMB eligible.

NOTE: Eligibility for QMB coverage begins the month after a determination is made.

3530.05SLMB COVERAGE

For a couple or an eligible individual with an ineligible spouse, the assets of the 2 spouses must be below \$6000, and their income must be over 100% and equal to or under 120% of FPL for 2 (see Chart VI). SLMB eligibility exists as long as the couple/eligible individual is entitled to, or in receipt of, Medicare Part A.

An individual whose eligibility is based solely on blindness can be SLMB eligible.

NOTE: Can be retroactive for 3 months, but not prior to 1/1/93.

3530.06QUALIFYING INDIVIDUALS (QI)

There are 2 groups of Qualifying Individuals:

- I. Income and asset eligibility for this coverage exists for QI Part 1 for a couple or an eligible individual with an ineligible spouse if the assets of the 2 spouses are less than \$6,000, and income is more than 120% FPL for 2 but less than 135% FPL for 2 (see Chart VI). The couple or eligible individual must be entitled to, or in receipt of, Medicare Part A.

A couple or eligible individual whose eligibility is based solely on blindness can be QI Part 1 eligible.

NOTE: Eligibility begins the month of application up to 3 months retroactive but not before January, 1998. An individual cannot receive coverage under Medicaid and QI Part 1 at the same time. A couple/eligible individual may be eligible for a Medicare Buy-in by meeting special rules explained in 3520.04, .05, .06, .07, and by using the budgeting process in 3520.03.

If the couple/eligible individual receiving QI Part 1 coverage become eligible for Medicaid, for example by meeting a deductible, they are opened for Medicaid effective the date they are eligible. Action should then be taken to close QI Part 1 coverage.

The Medicaid may be opened retroactively, even if this results in overlapping coverage in the retroactive period. In this situation, there may be some months in which the couple/eligible individual are covered by both QI Part 1 and Medicaid due to the system delay in closing QI Part 1 coverage. Action should be taken to close QI Part 1 coverage if Medicaid will continue prospectively.

II. Income and asset eligibility for QI Part 2 exists for a couple or an eligible individual with an ineligible spouse if the assets for the 2 spouses are less than \$6,000 and income is equal to or more than 135% of the Federal Poverty Level (FPL) for 2 and less than 175% FPL for 2 (see Chart VI). The couple or eligible individual must be entitled to or in receipt of Medicare Part A.

An eligible couple or individual whose eligibility is based solely on blindness can be QI Part 2 eligible.

- A. The individual is eligible for help in paying for their Medicare Part B premium. See Chart III(g) for benefit amounts.
- B. This benefit cannot be authorized in the same month in which the individual is receiving Medicaid coverage.

C. The individual must apply each year for which they are requesting this benefit.

3530.07QDWI COVERAGE

If either or both members of the couple or the eligible individual with an ineligible spouse are Qualified Disabled and Working Individuals (QDWI) and their countable income does not exceed 200% of the FPL for 2 (see Chart VI), and countable assets are less than or equal to \$6000, the Department will pick up the cost of Medicare Part A premiums only. See Appendix 3-1 regarding eligibility criteria.

3530.08MEDICALLY NEEDEY COVERAGE FOR A COUPLE

If the couple or eligible individual with an ineligible spouse is not Medicaid eligible under SOBRA, the Protected Income Level (PIL) for 2 (see Chart V) is deducted from the countable income. This is used to determine the amount of the deductible to be met prior to Medically Needy coverage beginning. (See Section 6000.)

3540 DEEMING AND ALLOCATION OF INCOME

I. Deeming:

When an eligible individual is living in the same household with an ineligible spouse, or if the eligible individual is a child under age 18 living with a parent, the income of the spouse or parent is budgeted in determining the individual's eligibility. This process is called "deeming." In determining the ineligible spouse's or parent's income, exclude any income listed in section 3430 (excluded income).

Deeming from the ineligible spouse stops the month after the couple ceases to live together.

Deeming from parent to child stops the month after the child no longer resides with the parents. It also ceases when the child reaches age 18, even if the child is still a student and still living in the parent's household.

II. Allocation:

An allocation is an amount deducted from income which is considered to be set aside for the support of certain individuals other than the eligible individual. Specifically:

A. ineligible child allocation:

- (1) when determining eligibility for a child, allow an allocation from the parents income for each ineligible child living in the household.
- (2) when determining eligibility for an individual or a couple, allow an allocation from the parent's income for each ineligible child living in the household.
 - (a) for SSI, the State Supplement and when using the Pickle, DWB, DAC disregards, an allocation is allowed only from the income of an ineligible spouse
 - (b) in other Medicaid determinations, an allocation is allowed from the income of the eligible individual or couple as well as the ineligible spouse.

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- (3) step-parents can allocate to legal children only (including mutual), not to step-children.
- (4) allow an allocation for a child who is under age 22 (through age 21) and a student regularly attending school or college or training designed to prepare him/her for a paying job. The allocation can be used for a child who is away at school as long as they are considered to be temporarily absent.

A child away at school is considered temporarily absent if s/he returns home on some weekends, holidays, or vacations and parent(s) have authority to make decisions on the child's behalf whether or not this authority is exercised.

- (5) allocations from a spouse's or parent's income for an ineligible child in the household (or temporarily absent from the household) end the month the child attains age 18, or if a student, age 22.
- (6) the amount of the allocation is equal to the difference between the ineligible child allocation amount in Chart III (b) and the ineligible child's gross monthly income. Gross monthly income for this purpose is gross non-excluded income (see Section 3430 for exclusions) minus the specific exclusions in III below.

B. Parent Allocation: when determining eligibility for an eligible child,

- (1) deduct an amount from an ineligible parent's own income when deeming parental income to an eligible child. This is the parent allocation.
- (2) the amount is equal to the parent's allocation in Chart III (b).
- (3) step-parents are not included in the parent allocation.

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III. Special exclusions in deeming and allocating:

When determining the amount of money to be deemed from the ineligible spouse to an eligible spouse, from a parent to an eligible child or when determining the income of an ineligible child to whom an allocation is made, the following is excluded income:

- A. All income excluded in Section 3430 except for one-third of child support received.
- B. Income which has been used as countable income in TANF, SSI, State Supplement, general assistance, or federal programs that are based on need (such as Veteran's Pensions) as well as the assistance payments themselves.
- C. Income used to comply with the current terms of court-ordered support and Title IV-D (SELU) support payments.
- D. When one member of a couple is receiving SSI or State Supplement, they are considered as an eligible couple when determining eligibility for Medical Assistance for the other member. The actual SSI or State Supplement payment is excluded.
- E. When determining eligibility for a child when siblings receive SSI or State Supplement, consider the siblings to be eligible children, excluding the actual SSI or State Supplement payments.
- F. When determining eligibility for a child when a parent is receiving SSI or State Supplement, exclude any income used in the calculation of SSI or State Supplement and the actual payment. No parent allocation is made in this case.

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3560 BUDGET FOR AN ELIGIBLE CHILD

I. Newborns

If the newborn's mother is receiving Medicaid (or is covered as part of the retroactive period) on the date the baby is born, the baby is eligible for the same level of coverage as the mother regardless of the newborn's income or assets. The mother must be fully covered by Medicaid on the day of the baby's birth. In other words, if mother meets the deductible amount on the day of the baby's birth and is partially responsible for any medical bills on that date, the newborn is not eligible in this group.

Coverage continues for one year, as long as the mother maintains the home for the child. This means that the baby is eligible without regard to: changes in family income or composition, cooperation with DSER, cooperation with TPL, obtaining a Social Security number or declaring citizenship status. The child is continuously eligible for the one year unless s/he no longer resides with the mother, moves out of state or mail is returned as undeliverable.

II. Children under age 19

Children under the age of 19 are continuously eligible for six (6) months after eligibility is determined by application or review beginning with the month of application or review.

The child is continuously eligible without regard to changes in family income or composition.

The child is continuously eligible until the end of the six (6) months unless s/he reaches age 19, moves out of state or mail is returned as undeliverable.

This provision applies to all categorically eligible children including those eligible as SSI-related. Coverage for SSI-related children continues for six (6) months even if medical eligibility ends during this six (6) month period. It does not apply to those under age 19 who are eligible as medically needy or while covered under presumptive eligibility.

III. Stepparents

Income is not deemed from a stepparent. When looking at the parent allocation, look at the amount for a one-parent household. The eligible child is treated as "living with others".

3560.01 SSI CATEGORICAL COVERAGE

To determine the eligibility of a child:

- I. Subtract the allocation for ineligible children and/or aliens from the parental unearned income.
- II. If the allocations are greater than the unearned income, or there is no unearned income, subtract the excess allocations from the parental earned income.
- III. Subtract the \$20 general income exclusion from any remaining parental unearned income.

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- IV. If the remaining unearned income is less than \$20, subtract the remainder of the \$20 from the parents' combined earned income.
- V. Subtract \$65 from the remaining earned income.
- VI. Subtract one-half the remaining earned income from the result of Step 5.
- VII. Add the result of Step 3 (countable unearned income) to the result of Step 6 (countable earned income).
- VIII. Subtract the parental living allowance (see Chart III (b)) from the result of Step 7 (parental countable unearned and earned income).
- IX. Divide the result of Step 8 by the number of eligible children in the household. This is unearned income to the eligible child(ren).

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If there is more than one eligible child in the household, divide the deemed income equally among them. However, do not deem in excess of the amount which, when combined with the child's own income, would make the child ineligible. That excess is deemed in equal amounts among the other eligible children in the household in addition to their equal shares of the deemed income. (see Example 1)

Determine the child's countable income:

- I. Combine the deemed income with the child's own unearned income.
- II. Subtract the \$20 Federal Disregard (General Exclusion).

The remainder is the net unearned income.
- III. Combine all gross earned income.
- IV. Subtract any remainder of the \$20 Federal Disregard not deducted from the unearned income.
- V. Subtract any Impairment Work-Related Expenses (IRWE) outlined in Appendix 3-2.
- VI. Subtract the earned income disregard of \$65.
- VII. Divide the remainder by 2.

The remainder is the net earned income.
- VIII. Combine the net earned and unearned income.
- IX. Subtract the State Disregard for 1. (see Chart III(a)).

The remainder is the countable income.

If the countable income is below the SSI/State Supplement Income Standard for 1, see Chart III(d), (living in the household of another) the child is categorically eligible.

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EXAMPLE:

Mr. and Mrs. Fry have 2 children, Linda (age 10) and Mike (age 11). Mike has been found disabled through the Medical Review Team. Mr. Fry earns \$500 weekly. There is no other income for the family.

| | |
|---|--|
| \$500 weekly gross income (Mr.) | |
| <u>X 4.3</u> | |
| 2150 monthly gross income | |
| <u>- 229</u> ineligible child allocation to Linda | |
| 1921 | |
| <u>- 20</u> federal disregard | |
| 1901 | |
| <u>- 65</u> earned income disregard | |
| 1836 | |
| <u>- 918</u> earned income disregard | |
| 918 | |
| <u>- 687</u> living allowance for 2 parents (Chart III(b)) | |
| 231 deemed to Mike | |
| <u>- 20</u> federal disregard | |
| 211 | |
| <u>- 55</u> state disregard | |
| 206 countable income for Mike who is categorically eligible. Income is less than the SSI/State Supplement standard for 1, living in the household of another (Chart III(d)) | |

If the countable income is equal to or above the appropriate SSI/State Supplement Income Standard the individual may be eligible for categorical coverage under the special groups.

3560.02PICKLE DISREGARD

For individuals covered by this group subtract the allowable portion of the Social Security benefit. If the resulting countable income is below the SSI/State Supplement Income Standard, the individual is eligible. The PICKLE Amendment client is also eligible to have Medicare Part B premiums paid. (See Appendix 3-1.)

The PICKLE Amendment individuals are also eligible to have Medicare Part B premiums paid (see Appendix 3-3).

If after applying these disregards, income is equal to or above the appropriate SSI or State Supplement Income Standard the individual is not eligible

The individual may be eligible under 3560.03 - 3560.04 but the Pickle/DAC/DWB disregards are not used to determine coverage under these other groups.

3560.03SOBRA COVERAGE

If the countable income is less than or equal to 100% of the FPL for 1 (see Chart VI) and the eligibility is based on disability (not blindness), the child is SOBRA eligible.

3560.04 MEDICALLY NEEDY PROCESS IN DEEMING TO AN ELIGIBLE CHILD

If the child is neither Categorically Needy or SOBRA eligible, then the Protected Income Level (PIL) for 1 (see Chart V) is deducted from the countable income. This is used to determine the amount of the deductible to be met prior to beginning Medically Needy coverage. (See Section 6000.)

3600 GUIDELINES FOR INDIVIDUALS AND COUPLES RESIDING IN ADULT FOSTER HOMES (AFH), FLAT RATE BOARDING HOMES (FRBH), COST REIMBURSEMENT BOARDING HOMES (CRBH) AND ADULT FAMILY CARE HOMES (AFCH)

There are four types of Licensed Homes:

- I. Adult Foster Homes (AFH)
 - A. Private AFH are those who accept state assistance only through the BMR Waiver Program or not at all.
 - B. State assisted AFH are those who accept state assistance through SSI/State Supplement or the BMR Waiver Program.
- II. Flat Rate Homes (FRBH) with 6 or fewer beds.
- III. Cost Reimbursement Homes (CRBH) with more than 6 beds.
- IV. Adult Family Care Homes (AFCH) with up to 5 beds. These homes are for those needing a level of care that is less than that provided in a nursing facility but more than that provided in a Boarding Home.

When determining eligibility for Medicaid, "countable income" is gross income minus exclusions and disregards identified in Sections 3400 and 3500. NOTE: When determining eligibility for State Supplement for individuals residing in living arrangements I-IV above, there is no \$55 state disregard of income.

Individuals and couples must meet the asset criteria in Section 3300-3370 as well as the income criteria described below.

3610 ADULT FOSTER HOMES

- I. Individuals residing in this living arrangement whose countable income is under the income limit for SSI/State Supplement need to apply for SSI/State Supplement in order to get help with the cost of room and board. These income limits are in Chart III(f). When eligible for SSI/State Supplement, Medicaid coverage is also provided. See Section 7000 for eligibility rules for the State Supplement.
- II. If countable income is equal to or over the State Supplement income limit for this living arrangement (Chart III(f)), the individual may be eligible for Medicaid. The individual is considered to be a community client "living with others". There is no income-in-kind since they are considered to be paying their share of expenses.

3610 cont.

- III. If the individual is applying for a Home Based Waiver program, eligibility is determined using the rules in Section 5000.

3620 FLAT RATE BOARDING HOMES

- I. Individuals residing in this living arrangement whose countable income is under the income limit for SSI/State Supplement need to apply for SSI/State Supplement in order to get help with the cost of room and board. These income limits are in Chart III(f). When eligible for SSI/State Supplement, Medicaid coverage is also provided. See Section 7000 for eligibility rules for the State Supplement.
- II. If countable income is equal to or over the State Supplement income limit for this living arrangement (Chart III(f)), the individual may be eligible for Medicaid. The individual is considered to be a community client "living with others". There is no income-in-kind- since they are considered to be paying their share of expenses.
- III. If the individual is applying for a Home Based Waiver program, eligibility is determined using the rules in Section 5000.

3630 COST REIMBURSEMENT BOARDING HOMES AND ADULT FAMILY CARE HOMES

These homes are also classified as Private Non-Medical Institutions (PNMI) and receive reimbursement from Medicaid for the difference between the client's cost of care and the Medicaid rate for the home. When determining the monthly Medicaid rate, use 31 days.

- I. Individuals whose countable income is below the SSI and/or State Supplement income limit for these living arrangements (Chart III(f)) must apply for SSI and/or State Supplement if they want help with room and board charges.
- II. If countable income is equal to or over the State Supplement limit for these living arrangements (Chart III(f)) but under the Medicaid rate for the home, the individual is eligible for Medicaid coverage and for help with the cost of room and board up to the Medicaid rate.

At the option of the couple, eligibility may be determined as a couple if either member of a couple is not eligible when treated as an individual. The countable income of each spouse is totaled. Each spouse is deemed to receive one-half of this total and each is compared to the Medicaid rate for the home.

Each individual is given a cost of care by DHS as in (E)(4) below.

- III. If countable income is equal to or over the Medicaid rate for the home, the individual may be eligible for Medicaid as a community client after meeting a deductible. The individual gets a Medicaid card but is not eligible for help with the cost of room and board. No cost of care is determined. Determine a deductible following the guidelines in Section 3520.07 for an individual "living with others". Deduct the medical services portion of the monthly PNMI amount for the facility. If there is any remaining deductible, subtract the expenses indicated in Section 6000.

3630 cont.

guidelines in Section 3520.08 for an individual "living with others". Deduct the medical services portion of the monthly PNMI amount for the facility. If there is any remaining deductible, subtract the expenses indicated in Section 6000.

- IV. Home Based Waiver - as with all individuals, those requesting Waiver services must apply for SSI and/or State Supplement if they need help with the cost of room and board. The Waiver agency makes the decision on medical need for Wavier eligibility with this group. The eligibility worker does not need to request this decision.

For those individuals whose income is equal to or over the SSI/State Supplement income limit and are applying for Waiver services in a CRBH or AFCH, use Section 5000 to determine Medicaid eligibility.

If eligible for Medicaid under the Waiver, client cost of care is determined using the process outlined in this section.

V. Cost of Care

- A. A cost of care or assessment is determined for all individuals who are over the income limit for SSI. This means that a cost of care is determined for:

1. those who are eligible for a State Supplement only (not SSI), and,
2. those who are over the income limit for the State Supplement but whose countable income is less than the Medicaid rate for the facility where they reside.

The cost of care is the monthly amount the individual is expected to contribute toward the cost of his/her care in the facility.

- B. The individual has a zero cost of care for the month they are admitted to the facility. There is a cost of care for the month of discharge.

- C. Changes in the cost of care are effective with the month the change is reported. No retroactive changes in the cost of care are made.

- D. The Cost of Care for an individual is determined as follows:

From total gross monthly income, subtract:

1. Earned income disregard (see Sections 3440.03)
2. Current federal, state or local income tax deductions

Usually the amount of taxes withheld will be based on the previous year's income tax return. The adjustment for taxes cannot exceed the current tax liability. A deduction for past due taxes is not allowed. For example, last year \$600 was due in income taxes. \$80 per month is withheld for income tax. Only \$50 per month can be allowed as a deduction.

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3. \$70 (personal needs and federal disregard)
4. Medicare premium for the individual

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5. HUD Standard
6. Health insurance premiums incurred by the individual for the individual and/or the individual's spouse if the spouse is covered by Medicaid and is residing in a Cost Reimbursed Boarding Home, nursing facility or covered by a Home Based Waiver.
 - * Premiums must be incurred by the Medicaid recipient. If the health insurance is provided by the community spouse through his/her coverage, this is not considered to be a cost incurred by the Medicaid recipient. It is a cost incurred by the community spouse.

NOTE: Indemnity insurance premiums are not deducted. They are policies that pay for lengths of stay or for a condition and not for specific services. Third Party Liability should be contacted to assess cost effectiveness. If cost effective TPL will arrange for premium payment.

The result is the cost of care.

The cost of care for a couple is determined as follows:

From total gross monthly income of the couple, subtract:

1. Earned income disregard
2. Current federal, state or local income tax deductions

Usually the amount of taxes withheld will be based on the previous year's income tax return. The adjustment for taxes cannot exceed the current tax liability. A deduction for past due taxes is not allowed. For example, last year \$600 was due in income taxes. \$80 per month is withheld for income tax. Only \$50 per month can be allowed as a deduction.

3. \$120 (personal needs and federal disregard)
4. Medicare premiums for the couple
5. HUD Standard 6. Health insurance premiums incurred by either or both spouses for either or both spouses. As long as both spouses are covered by Medicaid and residing in a Cost Reimbursed Boarding Home or nursing facility or covered by a Home Based Waiver.
 - * Premiums must be incurred by the Medicaid recipient. If the health insurance is provided by the community spouse through his/her coverage, this is not considered to be a cost incurred by the Medicaid recipient. It is a cost incurred by the community spouse.

3630 cont.

Divide the remainder by 2.

The result is the cost-of-care for each individual.

NOTE: Total gross monthly income includes the State Supplement benefit for those not eligible for SSI.

E. Deductible Process

If the individual's countable income exceeds the SOBRA limit (100% FPL) and is under the Medicaid rate for the home they are living in (Medicaid is helping with the cost of room and board), determine a deductible following the guidelines in Section 3520.08 for an individual or Section 3530.08 for a couple "living in the household of another". Deduct the medical services portion of the monthly PNMI amount for the facility. If there is any remaining deductible, subtract the expenses indicated in Section 6000.

3700 WORKING DISABLED

This coverage group includes individuals who meet the SSI standard for disability and who have earnings subject to federal tax withholding but are not eligible for Medicaid under any other coverage group. These individuals may buy into Medicaid by paying a monthly premium if the specific requirements of this coverage group are met. This is an SSI related coverage group using SSI related rules for treatment of income and assets however, there are income and asset limits specific to this coverage group.

3700.01 INCOME

There is a two step test of income that must be met.

- I. Countable unearned income must be equal to or less than 100% of the Federal Poverty Level.
- II. Countable unearned and earned income subject to federal tax withholding must be less than 250% of the FPL.

3700.02 The individual must have earnings subject of federal tax withholding but there is no minimum work requirement and no SGA earnings test.

3700.03 ASSETS

The countable asset limit for an individual is \$8,000, for a couple it is \$12,000.

3700.04 DISABILITY

The individual must meet the SSI criteria for disability. This criteria is met if there

is currently in effect a decision by the Social Security Administration that this disability criteria is met.

3700.05REVIEW PERIOD

- I. Eligibility is reviewed every 12 months.

3700.06CHANGES

- I. If the individual becomes eligible for Medicaid without a premium because of a change in income and that change is expected to last for a full calendar month, the individual will be moved to Medicaid coverage without a premium. This change is made effective the month the change occurred as long as this change is reported within 10 days of its occurrence; otherwise, it is effective the month the change is reported. "Occurrence" is the date the change takes place.

The individual will be given a refund for any prepaid months in which s/he is subsequently moved to coverage without a fee.

3700.07PREMIUMS

- I. Due Date/Amount of Premium

A premium payment is due for each month the individual is open for Medicaid under this coverage group unless s/he is exempt from a premium as identified below.

If a couple is eligible under this coverage group, there is one premium for the couple based on the couple's countable income.

Premiums are due on the first day of each month of coverage.

The premium amount is based on countable monthly income projected for the 12 month review period and does not change. A premium is effective the month an individual is added for coverage under this coverage group. Any decrease in premium is effective the month the individual's coverage under this group ends.

If monthly countable income is over 150% and equal to or less than 200% of the FPL (Federal Poverty Level), the monthly premium is \$10.00. If monthly countable income is over 200% and less than 250% of FPL the monthly premium is \$20.00. Chart VI identifies the Federal Poverty Level amounts.

- II. Exemptions from Premium Payment

An individual is exempt from a premium:

- A. If countable income is less than or equal to 150% of the federal poverty level,

3700.07 cont.

- B. If s/he is responsible for paying for their Medicare Part B premium,
- C. If there is good cause for premiums not paid or not paid when due because of one of the following reasons:
 - 1. mail delay;
 - 2. illness of the individual or their responsible relative;
 - 3. unanticipated emergency beyond the control of the individual or their responsible relative.
- D. For periods of retroactive coverage or temporary coverage.

III. Payment of Premiums

- A. Premiums can be paid monthly, for more than one month at a time, or they can be paid in advance for the twelve-month review period. Payments will be credited to the earliest months of coverage first, during the current 12 month review period.

For example: A monthly premium of \$10 is due during a twelve-month review period from January to December and the first payment of \$50 is received on June 1st. Months one through five (1-5) will be credited with a premium paid. The June payment is overdue.

- B. When a premium is not paid by the first of the month in which it is due the Department will give notice of nonpayment.
- C. There is a grace period for nonpayment of premiums. The grace period extends through the last day of the 12 month review period.

For example: If the review period is January through December, the individual has until December 31 to pay his or her premiums for the period January to December. If the last day of the month falls on a weekend or holiday the premium is then due on the next workday.

- D. When eligibility under this coverage group ends prior to the end of the 12 month review period, the grace period for premium payment extends to the last day of the month in which coverage under the Working Disabled group ends.

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For example, an individual granted 10/99 has a review date of 9/00 but his coverage is changed to Medicaid without a premium for 12/99. The grace period for payment of premiums for October and November is November 30.

- E. When eligibility under this coverage group is continued pending a fair hearing and a premium is due, the grace period is the last day of the month for which coverage is provided.

For example, the premium for the month of July is due July 1st. The grace period extends to July 31st.

3700.08NONPAYMENT OF PREMIUMS

- I. At the beginning of month 12 of the review period, notification will be given if any premiums for the review period have not been paid when due. The individual will also be notified of the penalty incurred because of the nonpayment.
- II. At the 12 month review a determination will be made as to whether there are any overdue premiums. If so, coverage under the Working Disabled group will end unless there is "good cause" for nonpayment. Coverage as Working Disabled cannot begin again until any unpaid premiums are paid.

3700.09FAIR HEARINGS

- I. Coverage as Working Disabled continues pending a hearing decision if a fair hearing is timely requested even if the individual is not paying premiums that are due. If the individual was responsible for paying a premium prior to the proposed negative action, this premium will continue to be due.
- II. If the individual is upheld at the fair hearing and they have overpaid any premiums s/he will be issued a refund.